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THE WHITE HOUSE
WASHINGTON

September 14, 1977

Stu Eizenstat

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

VA RESPONSE TO NATIONAL ACADEMY
OF SCIENCE REPORT ON THE VA
HOSPITAL SYSTEM

THE WHITE HOUSE
WASHINGTON

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<input type="checkbox"/>	LOG IN/TO PRESIDENT TODAY
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ACTION
FYI

<input type="checkbox"/>	MONDALE
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<input checked="" type="checkbox"/>	EIZENSTAT
<input type="checkbox"/>	JORDAN
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<input type="checkbox"/>	WATSON
<input type="checkbox"/>	LANCE
<input type="checkbox"/>	SCHULTZE

<input type="checkbox"/>	ENROLLED BILL
<input type="checkbox"/>	AGENCY REPORT
<input type="checkbox"/>	CAB DECISION
<input type="checkbox"/>	EXECUTIVE ORDER
	Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

<input type="checkbox"/>	ARAGON
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<input type="checkbox"/>	BUTLER
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THE PRESIDENT HAS SEEN.
THE WHITE HOUSE
WASHINGTON

sfu
I

September 8, 1977

MEMORANDUM FOR:

THE PRESIDENT

FROM:

STU EIZENSTAT
FRANK RAINES

Stu

SUBJECT:

VA Response to National Academy
of Sciences Report on the VA
Hospital System

Max Cleland has sent you a memorandum with a copy of his proposed transmittal letter to Congress, of the VA response to the National Academy of Sciences report on the VA hospital system. He is seeking your approval of this submission in line with the understanding reached in his meeting with you and Bert Lance several months ago. A decision is needed as soon as possible.

The NAS study was required by the Veterans Health Care Expansion Act of 1973. The Academy went beyond its mandate to look at resource allocation questions and examined virtually every aspect of the quality of care in the VA hospital system. They also raised the issue of the future of the VA system in the context of National Health Insurance. The report became controversial after the Academy press release put its primary emphasis on the recommendations to integrate the VA hospitals into the community health care delivery system where they are located. the VA would like to forward this report as soon as possible to Congress.

Tab A contains the Cleland memorandum and proposed transmittal letter. ~~Tab B contains a short summary of the NAS report taken from an Academy publication. Tab C contains a longer chapter by chapter summary prepared by this staff. You need not read either.~~

The NAS study contains 37 recommendations. Some of these relate to standards of good medical practice within current budgetary levels, others call for additional resources, and a third group raise policy questions about the future of the VA hospital system. The VA agreed with 23 of the recommendations and disagreed with 14. The recommendation with which they disagreed are primarily those which question the current role of the VA system.

The NAS summarized its view of the changing role of the VA hospital system in this way:

(T)he VA hospital system was established to take care of the medical needs of veterans with service-connected disabilities when alternative facilities were not available, the federal government had almost no responsibility for the health care of the public, and third-party insurance was almost nonexistent. Many of these circumstances have changed: most treatment now provided by the VA is for non-service-connected conditions; alternative facilities for acute hospital care are much more widely available; more than four-fifths of the public have some health insurance protection; and the federal responsibility for health care is large and still growing. Decisions on resources for the VA health-care system can hardly be discussed responsibly without explicit recognition of these major changes in social conditions and public policy.

The report notes that only 30% of the patients treated by the VA have service-connected disabilities. Over 80% of the medical care provided is for non-service-connected disabilities (indicating that some patients with service-connected disabilities are being treated for unrelated conditions).

The VA response has been reviewed by this staff and OMB. Max felt it was necessary for him to indicate that he believed the VA hospital should remain as a "specialized resource for veteran care." We and OMB recommend that you approve the transmittal letter. The VA understands that this does not foreclose any options you may wish to exercise on the VA in the context of national health insurance.

At our request VA has deleted from its response the detailed implementation plans. These resource questions will be taken up as part of the FY 1979 budget.

The major policy questions on the role of the VA system in relation to national health insurance remain. We are considering the feasibility of an interagency effort to examine this issue. Such an effort would be controversial with veterans groups but is essential if we are to rationalize the operations of federal health care providers.

Decision

- ☒ Approve VA Transmittal Letter
(OMB, Domestic Policy Staff recommend)
- ☐ Disapprove VA Transmittal Letter

*ok, provided the
policy issues is
thoroughly explored
by agencies (&
perhaps with
Congressional staff)
J.C.*



VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420



September 1, 1977

FACSIMILE

Dear Mr. Chairman: 1/

Pursuant to the provisions of Section 201(c)(2) of Public Law 93-82, I am forwarding to you the detailed response of the Veterans Administration to the National Academy of Sciences' report, "Health Care for American Veterans," received June 3, 1977. The enclosed document gives my views of the findings and recommendations of the National Academy of Sciences, and notes the findings and recommendations with which the Veterans Administration agrees or disagrees with the National Academy of Sciences' report. In the latter case, our reasons for disagreement are stated.

Although this document represents a careful, detailed, and considered response to all aspects of the complex subject matter covered in the National Academy of Sciences' study, it has not been possible to prepare a completely exhaustive evaluation in the time permitted by Public Law 93-82 for the VA response. The content of the National Academy of Sciences' report and its proposals for sweeping and fundamental changes in the Veterans Administration health care delivery system are so far reaching that I believe it probable that additional recommendations and proposals for action by the Congress and by the Veterans Administration will be developed over a period of several months. I wish, therefore, to reserve the option to make additional future submissions to the Veterans Affairs Committees of the Senate and the House of Representatives.

This document does not include the steps and timetable necessary to implement the accepted recommendations, and the resource requirements. I am aware that this is a requirement of Public Law 93-82, and I assure you that this will be met. The VA planning process to develop this information has been completed, however, the schedule for response has not permitted the necessary critical requirement of careful budgetary review. We have begun this process and will submit our implementation plans, with their resource needs as a companion document to the President's fiscal year 1979 budget request.

(i)

A



VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420



AUG 31 1977

MEMORANDUM FOR:

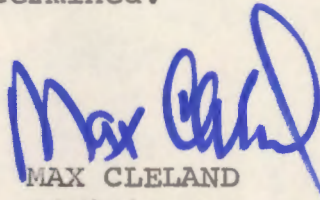
The Honorable
Jimmy Carter
President
The White House

The enclosed proposed letter of transmittal from me to the Chairmen of the Senate and House Committees on Veterans' Affairs is submitted for your review. This letter, which has been coordinated with the Office of Management and Budget and the Domestic Policy Staff, will transmit to the Congress the Veterans Administration's response to the Report of the National Academy of Sciences Study entitled "Health Care for American Veterans." The original study and the VA response are both required by Public Law 93-82.

You will note that the letter is in support of the VA's health-care system as it operates at this time, yet does not commit you to a fixed position for the future. It is intended to improve your administration's position with the veterans organizations, and to assure the individual veteran that he or she has available a health-care resource at a time when many veterans have no other option to meet their needs. The letter is also intended to reassure the employees of the VA, who see the NAS recommendation to "phase-out" the VA system as imminently threatening their livelihood.

The President
The White House

In my opinion, these assurances are critically necessary at this time. Furthermore, I do not believe they reduce or limit your capability of examining alternative roles for the VA health-care program. Such examination and review will be most appropriate as a comprehensive national health policy is determined.



MAX CLELAND
Administrator

Enclosure

On June 10, 1977, one week after delivering the copies of its report to the Congress and to the Veterans Administration, the National Academy of Sciences independently conducted a press conference and issued a press release describing its report. This press release, in my opinion, did not accurately reflect the findings of the National Academy of Sciences, as embodied in the official report. It unduly emphasized negative findings of the National Academy of Sciences, ignored the positive appraisals of Veterans Administration health care delivery, and went far beyond the National Academy of Sciences position stated in the report in suggesting future directions for the Veterans Administration. I took sharp issue at that time with the wording and tone of the National Academy of Sciences press release. Publicity in national media resulting from that press conference has seriously disturbed veterans of this country, thousands of whom have expressed concern that the Veterans Administration system will be phased out as a separate and identifiable entity to provide the health care that has been promised them by the American people, and traditionally has been provided by the Congress. Similarly, among the employees of the Veterans Administration Department of Medicine and Surgery morale has suffered severely as a result of that publicity. Finally, the resultant publicity and the editorial comment it stimulated in both print and electronic media have, in my opinion, done considerable harm to the favorable impression the American people have correctly held over the years of the quality of care provided by the Veterans Administration health care system to Americans veterans.

As to the substance of the National Academy of Sciences' report itself, as distinguished from the press release, I was pleased that the Academy found so much to praise in the Veterans Administration, both historically and at present. In the deficiencies found by the Academy in the health care system, there were few matters that surprised me or the staff of the Department of Medicine and Surgery, or that could have surprised the Members of the oversight committees of the Congress. Some of the deficiencies noted clearly represent constraints of existing legislation or appropriations. Some deficiencies noted have been previously reported by others and significant corrective action had been started at the time of the study and action has since proceeded effectively.

The National Academy of Sciences' report contained two categories of recommendations. One includes proposals based on site visits, collection of statistics, interviews, and other factual data. These proposals are specific and lend themselves to a definitive response. The second addresses matters of policy. These recommendations are not supported by data developed during the NAS study effort, rather they are conclusions based on subjective observations or personal opinion. They also are those that suggest the greatest degree of departure for the Veterans Administration health care delivery system from that role which the Congress has heretofore delineated.

Some of the recommendations of the National Academy of Sciences for an altered Veterans Administration role would require legislative action to implement and perhaps additional appropriations for planning, staffing, construction, or other purposes. Some steps recommended by the Academy already have been taken by the Department of Medicine and Surgery, or are planned. Other recommendations appear to be based on data obtained by the Academy in fiscal year 1975, and are not substantiated by data now available from ensuing years.

Some of the recommendations for an altered future Veterans Administration role were imaginative, but would be difficult to implement without endangering the integrity of the existing system as an independent entity tailored to the special needs of veterans. To the extent that the study has the purpose of improving the quality of medical care provided for veterans, I endorse it and its objectives. However, the suggestion, as emphasized in the National Academy of Sciences' press release, that the Veterans Administration hospital system be eliminated as a specialized resource for veteran care, is one I cannot support, because it runs contrary to the history of providing for veterans in this country, and to the frequently restated intent of the Congress in this respect.

The Veterans Administration health care system is a specialized resource. Although there are some areas where improvements can and should be made in that system, it would be tragic if it were to be weakened or eliminated. I do not know if the National Academy of Sciences itself envisioned total elimination of the system, because its proposal for a stepwise integration with community services appears to be lacking in clear definition as to the Academy's exact and ultimate intent.

I believe the response of the Veterans Administration that I am now submitting will provide definition and clarification, and will provide the Veterans Affairs Committees of the Senate and the House of Representatives with a blueprint and an opportunity to build upon the positive positions taken by the National Academy of Sciences. I believe it is a framework on which to build an improved and dynamic Veterans Administration health care delivery system--one that will best serve the needs of this Nation's veterans and will inure to the benefit of all American citizens.

Sincerely,

MAX CLELAND
Administrator

1/ Facsimile of
Separate letters to:

Chairman
Senate Committee of Veteran Affairs
U.S. Senate

Chairman
House Committee of Veteran Affairs
U.S. House of Representatives

B



Veterans Hospitals: Where

Do They Go from Here?

SINCE the establishment of Veterans Administration hospitals after World War I, changes in the financing and organization of other medical services in the United States have drawn into question the means by which the Federal Government provides health care to veterans. How well do veterans hospitals, clinics, and other medical facilities perform their respective services? Does the underlying rationale for providing those services remain valid?

In the Veterans Health Care Expansion Act of 1973, the Congress directed the Veterans Administration to request of the National Academy of Sciences "an extensive review and appraisal" of personnel and other resources in Veterans Administration medical facilities "to determine a basis for the optimum numbers and categories of such personnel and other resources needed to insure the provision to eligible veterans of high quality [health] care." The Committee on Health-Care Resources in the Veterans Administration, of the National Research Council's Assembly of Life Sciences, undertook the study. In its report, *Study of Health Care for American Veterans*, the committee summarized major points at issue in this way:

"... [T]he VA [Veterans Administration] hospital system was established to take care of the medical needs of veterans with service-connected disabilities when alternative facilities were not available, the federal government had almost no responsibility for the health care of the public, and third-party insurance was almost nonexistent. Many of these circumstances have changed: most treatment now provided by the VA is for non-service-connected conditions; alternative facilities for acute hospital care are much more widely available; more than four-fifths of the public have some health insurance protection; and the

federal responsibility for health care is large and still growing. Decisions on resources for the VA health-care system can hardly be discussed responsibly without explicit recognition of these major changes in social conditions and public policy."

Study of Health Care for American Veterans. Report to the Committee on Veterans' Affairs, U.S. Senate, by the Committee on Health-Care Resources in the Veterans Administration; Assembly of Life Sciences, National Research Council, National Academy of Sciences. Committee Print. 95th Cong., 1st Sess., June 7, 1977 (U.S. Government Printing Office, 1977; 324 pp.; \$3.50).

Mindful of those changes, the committee distinguished between "technical problems" in the study—assessing staff-to-patient ratios and quality of care—and the study's inherent "major policy issues." Now, "less than 30% of the patients treated by the VA have service-connected disabilities," the committee found. "More than 80% of all medical care provided is for non-service-connected disabilities. The eligibility laws are so broad that, for some conditions, most of the 29 million veterans in the country would be entitled to treatment if they applied. To what extent should VA health-care service capacity be adjusted to provide for the needs of all eligible veterans? This is clearly an issue of public policy—not a technical matter."

The committee examined the services the Veterans Administration provides, how it organizes its resources, and how well it performs. The committee did this through in-depth study of 27 of the 171 Veterans Administration hospitals and sample surveys of Veterans Administration staff and U.S. veterans.

The report describes a network of medical facilities that is the "largest medical-care delivery system in the United States." That Veterans Administration patients tend to be older than veterans in other hospitals, unmarried, and without health insurance indicates one of its human dimensions. It is a health-care network "handicapped by limitations on its structure that are in part the result of its legislative mandate and in part the result of historical developments and established practice," the committee said. For example:

Inpatient services predominate. Veterans hospitals rely too heavily on hospital care, maintaining more beds for acute care than are needed, the report says. Outpatient services are inadequate. "Many patients are admitted to hospitals who do not require hospitalization," the committee said, "and many patients are kept as inpatients much longer than is medically necessary or desirable . . ."

The committee found that Veterans Administration resources, although adequate for its current functions, are poorly distributed among geographic areas as well as among services within hospitals.

"The Committee believes that the VA should meet the health-care needs of eligible veterans who wish to use the VA by redistributing resources now available to the VA," the report says. Where there are few applicants for hospital beds, hospitals should be closed or converted to facilities for long-term care, the committee said. The committee recommended that Congress and the Veterans Administration implement policies directed toward integrating veterans' medical facilities with community health care.

A first step, in the committee's view, would be to permit the Veterans Administration to be reimbursed by both private and governmental third-party insurers. Communities and regions should be given a voice in the planning of new Veterans Administration medical facilities, including eight recently approved hospitals, the committee said. The committee also recommended that the Veterans Administration test the feasibility of providing comprehensive outpatient and inpatient services—following the model of health maintenance organizations—to veterans and in some cases their families. If successful, this pattern of health care should be extended throughout the Veterans Administration and, finally, become a part of community health care, accessible to both veterans and nonveterans, the committee said.

One of the bases for those recommendations is that it "seems reasonable to assume that the United States is moving toward some sort of universal entitlement to appropriate health care services," the committee said. "Under these circumstances, what is the appropriate role, if any, for a health care system intended to meet only a portion of the health care needs of a portion of the population?"

The number of veterans over age 65 may be expected to triple in the next 25 years, according to the report. To help meet proportionate increases in the need for long-term care, the committee recommended that the Veterans Administration take the lead in developing programs to provide that care, including alternatives to institutionalization.

Medical services in Veterans Administration hospitals are "generally adequate," the committee said, noting that quality of medical care among the hospitals studied was strongly related to their affiliation with medical schools. The few hospitals that the committee deemed to provide "outstanding" medical care were "highly affiliated" with medical schools. The few deemed deficient were understaffed and unaffiliated, the committee said.

Affiliation between veterans hospitals and medical schools, begun in 1946, has proved mutually beneficial, although neither the Veterans Administration nor the schools have studied their relationship closely, the report says. Cooperative studies should be undertaken, the committee said, to determine how the schools and the hospitals may be affected by changes in Federal health policies.

The committee found "substantial inadequacies in both the quantity and quality of professional psychiatric staff" in many Veterans Administration hospitals. Psychiatric units of veterans general hospitals are better staffed than are veterans psychiatric hospitals, the latter providing "essentially custodial care," the committee said. The report indicates further that psychiatric patients generally stay much longer, for the same diagnosis, in Veterans Administration hospitals than in nonfederal hospitals; acute medical care in psychiatric hospitals is inadequate; and, although the number of surgical operations performed is relatively small, surgical care in psychiatric hospitals is "so poor that inpatient surgery in such hospitals should be eliminated."

The committee urged immediate correction of "demonstrated practices of overprescribing and incorrect prescribing of drugs" in the treatment of psychiatric patients in veterans hospitals. Special emphasis should be placed on halfway houses, sheltered workshops, and other alternatives

to hospitalization for some psychiatric patients, the committee said, and "stringent mechanisms" should be developed for quality assessment and peer review in Veterans Administration psychiatric hospitals.

Saul J. Farber, chairman of the Department of Medicine at the New York University School of Medicine, chaired the committee. In remarks prepared for a news conference in June at the National Academy of Sciences in Washington, D.C., he said:

"The VA is delivering necessary care to a large number of needy veterans. This report in no way is intended to acutely or radically change the medical, surgical and psychiatric care these veterans are receiving. Rather, our recommendations are intended to be more long range with some that are short range that should improve the efficiency of the VA."

—H. DALE LANGFORD

THE WHITE HOUSE

WASHINGTON

September 6, 1977

MEMORANDUM TO:

THE PRESIDENT

FROM:

STUART EIZENSTAT
FRANK RAINES
ELLEN GOLDSTEIN

Stu

SUBJECT:

Summary of the Report of National Academy
of Sciences' Committee on Health-Care
Resources in the Veterans' Administration

Chapter One: Introduction

The circumstances of health care that prevailed when the VA was established have changed significantly and dramatically. Major changes in social conditions and public policy must be considered in any discussion of VA decision making. The fact that the 13.5 million World War II Veterans are now approaching the age when they may require long term health care is also an important factor in future VA decisions. The impact of National Health Insurance will also have a major effect on the VA system.

Chapter Two: Health Care Responsibilities of the VA

For the purposes of this study, only male veterans were considered because female veterans amount to less than 2% of the veteran population; another 10% of the 27-28 million veterans are ineligible for benefits. Because the veteran population is growing older, by the year 2000, more than 25% of them will be over 64 years old and the numbers requiring long term care facilities will triple.

An entitled veteran under 65 who certifies that he cannot pay for health care is eligible for most services except dental. All veterans over 65 or who are receiving a VA pension are also automatically eligible for care.

Only a very small proportion of veterans have ever been denied health care or has been dissatisfied with the amount of the care received.

Rather than expand the outpatient capacity of the VA system to meet growing demands, Congress directed VA to make these facilities available on the basis of eligibility priorities. Visits by veterans with service-connected disabilities increased by 1/3 between 1971-76; the visits by veterans without service connected

disabilities tripled for this same period. Most inpatient care goes to veterans on pension or compensation. Only 29% of VA hospital care is for veterans with service connected disabilities.

Veterans who rely on VA services tend to be older, unmarried, and without health insurance. Only 17% of VA users under 65 have health insurance compared to 81% of the total veteran population under 65. Dependents of Veterans who are totally disabled are eligible for VA health care.

Chapter Three: Program Expense and Budgets

Over one-fourth of the VA's 1977 budget of \$18.6 billion went to medical programs. VA health care expenditures are about 10% of the total federal health expenditures and are growing at a greater rate than national health expenditures because of VA's emphasis on institutional services. Staff costs account for 70% of VA's total operating budget. Between 1975-77, \$1.1 billion was spent on construction which is more than half the total spent on construction between 1965-77. Another \$479 million was requested.

Budgeting is based on the number of operating beds in VA's system, a figure controlled by Congress. The main workload indicator used to adjust funds is average daily patient census - an inadequate and often misleading measure. Incentives of the budgeting process have direct effects on VA management: admitting, retaining and discharging patients; allocation of beds; coloring of data submitted to VA's management information system; and purchasing non-VA services. In other words, the budget system has an inappropriate effect on decision-making in the VA system.

Chapter Four: Facilities

Most construction funds spent since 1975 have been for beds; the average VA hospital has 516. The proportion of psychiatric hospitals in the VA system is greater than non-VA, 18% to 7%. Three-fifths of VA's beds are less than 30 years old, 75% are over 20 years old. Most VA hospitals are located in urban areas -- SMSAs or in a nearby county. Many of the VA hospitals are operating more acute beds than are currently required, also a symptom of the non-VA system. VA decisions on the construction of facilities have usually been made without consideration of community plans and non-VA construction. There are fewer out-patient clinics in the VA system and most veterans live far from them. P.L. 88-450, passed in 1964, gave VA the authority to operate nursing home facilities; now 24% of all beds in the system account for these extended care facilities. Construction funds averaged for 1975-78 are 400% greater than the average spent between 1965-74, indicating a rapid acceleration in construction plans without regard for current utilization and future potential.

Chapter Five: Hospital Staffing

Most of the VA staff is full time and 45% of them are directly involved in patient care. Most physicians are part-time, but of those who are full time, they tend to be older, with a large percentage being women and foreign medical graduates, and a smaller percentage board certified. Between 1/4-1/3 of staff physicians rated the VA as an inferior place to work. The most common reasons for doctors leaving the VA are low salaries, limited professional advancement and narrower experience. Although VA is adequately staffed by physicians, this has little relation to the quality of care.

Almost all nurses are full-time and were generally more satisfied with the VA than physicians, however they were most dissatisfied with patient workload. Even more satisfied with VA were the psychologists and social workers, but at least a third thought that important improvements in care quality needed to be made.

The average daily patient census is used to determine staffing ratios. This is an inappropriate measure which doesn't take into account changes in care; it also encourages hospitals to keep a large inpatient roll. A study undertaken 10 years ago did improve nursing staff care but recommendations made at the time for practical future evaluations were not adopted. In the sample hospitals studies, most were found to provide adequate care but none provided outstanding care. Many units were found to be inadequately staffed. Although the nursing workload was found to be lower than the sample of non-federal hospitals, VA's staffing allocation methods need improvement.

Hospitals with low admission pressures admitted a higher proportion of applicants who required little care and who could well be treated as outpatients.

The average cost of nursing hours is higher in VA. Per patient day cost of nursing is 15% less than in non-VA hospitals because the number of nursing hours each day is less and also because patients require less care. Even so, average nursing costs per patient episode is 120-167% higher than in non-VA, partly because the average patient stay is longer.

VA general hospitals have far lower staffing ratios than do VA psychiatric hospitals; variation among hospitals' staff utilization is even greater. Most nurses in psychiatric facilities felt that between 25-30% of the patients were inappropriately placed. The committee feels that a large fraction of these patients could be treated more effectively and efficiently as out patients.

Only a small proportion of veterans are eligible for dental care. In contrast to private dental care, VA devotes more time to diagnostic service and less to preventive service. It is apparent that many VA dental services could be performed by trained dental auxiliaries. VA utilization of dental chairs and professional manpower is inadequate and inefficient. VA staff takes 20-29% longer on the average to complete the same procedures as non-VA dental staff.

Chapter Six: Management Information Systems

The largest hospital system in the country has no integrated management information system, and thus poses a serious problem for VA. Most hospitals rely on informal, manual information systems. A brief description of VA data systems follows:

1. AMIS (Automated Management Information System) - carries patient activity services provided and miscellaneous data information. Very time-consuming.
2. PTF (Patient Treatment File) - data is entered only after patient is released, often takes months to complete.
3. PAID (Personnel Accounting for Local Management) - the general ledger for VA, not fully implemented.
4. Log System (Logistics) - data on supplies and equipment; effective and reliable.
5. Medical Care Distribution Accounts (RLS 14-4) - manually prepared data that is supposed to help allocate medical care costs by unit and program, has significant problems which lessens its usefulness.

Both AMIS and PTF are designed for the Central Office, are statistics oriented, and therefore of little use outside of the Central Office. The systems are not responsive to ad hoc requests for information. The quality of data from all systems is variable. And because there is no one point of responsibility for all information systems, no one is responsible.

Chapter Seven: Ambulatory Care

Ambulatory care in the VA system was subjected to specific statutory and structural constraints before passage of P.L. 93-82 in August, 1973 which eased the situation and authorized care for veterans without service connected disabilities. However, the VA

system is still mainly oriented to providing inpatient care.

The eligibility requirements for this care are still restrictive. There is little interest in increasing capacity to provide for low priority patients, most of whom have no personal physicians, rely on the VA, and are recurrent users of the the outpatient facilities. Congress has directed the VA to allocate the current level of services by eligibility priority.

Organization and management of these facilities is poor. Almost half of those visited by the committee were judged inadequate and none were outstanding. Most clinics are under the direction of physicians who are concerned mostly with in-patient care. Currently, these facilities cannot provide comprehensive and adequate quality care.

Chapter Eight: Hospital Care - General

The geographic distribution and decisions on the number of operating beds are not primarily based upon the current volume of demand or need.

In hospitals with low admission pressures, a greater percentage of patients are admitted who generally stay longer than in hospitals with greater admission pressure. The variation among all hospitals is great: 5 to 95 applications per bed, 23% to 90% patients admitted. These variations have no relation to hospital size. Occupancy rates have no relation to application rates, length of stay, or admission rates.

Chapter Nine: Hospital Care - Inpatient Medicine

The VA patients tend to be low income, elderly, and suffering from chronic ailments. The average annual family income for 48% of the patients was \$5,000 or below. The first most common ailment was chronic heart disease; the second was alcoholism. Most required repeated care.

Of 21 hospitals visited, only 5 were rated outstanding and 3 were considered inadequate. The average ratio of nurses to patients is 38:100 and is correlated to the number of doctors. The inadequate hospitals had low staffing ratios and no house staff. In polling released patients, the committee found 50% of them rating the care excellent. This probably reflects the degree of their dependency on the VA. Patients generally admit that their illnesses are better explained than their treatment and progress.

VA patients in highly affiliated hospitals tend to have shorter stays. VA hospitals have longer diagnostic - specific stays than other hospitals.

Many acute care beds are inappropriately occupied. In a committee conducted patient census, they found 48% of the patients could have been treated in ambulatory, convalescent, or extended care facilities. There are many reasons for this: not enough nursing homes for the poor, greater availability of acute beds, the incentive to keep the beds filled, and lack of suitable homes to return to following discharge. Medical care in 5 of 6 psychiatric hospitals visited were rated inadequate in the management of acute medical problems.

Chapter 10: Hospital Care: Surgery

No surgery was performed on 47% of the patients admitted to surgical wards mostly because of inappropriate assignments based on inadequate information. None of the twenty sites visited were judged inadequate.

Patients felt that their conditions were better explained to them than the procedure, conditions to expect, or their progress.

Utilization of surgical facilities is very low; there are more operating rooms and surgeons than needed.

Mortality rates are much higher than expected in units with a low volume of surgery. Significant funds and lives could be saved by reducing the number of centers performing cardiac operations and renal transplants. In the case of renal transplants, the majority are performed in hospitals performing fewer than 16 such procedures a year. The national standard for such operations is a minimum of 24 per year and only 3 VA hospitals meet this standard. Since all renal transplants are now covered by Medicare, fewer and fewer veterans are coming to the VA system for this procedure. The demand could easily disappear.

Ten of the 24 psychiatric hospitals have surgical units. The crude mortality rates in these hospitals were more than twice as high as the rate in general hospitals, probably due to the low volume of surgery performed.

In affiliated hospitals, residents performed 80% of the operations. In 69% of these operations there was no supervision.

Chapter Eleven: Hospital Care: Psychiatry

Most VA psychiatric hospitals are not located near urban areas so that the most accessible psychiatric beds are in general VA hospitals. One third of the observed facilities were rated inadequate by the committee.

Of all the patients admitted with primary psychiatric diagnosis, only half were in psychiatric beds. Alcoholism as a diagnosis has increased from 6.9% in 1970 to 15.4% in 1975. Because of eligibility priorities, most psychiatric patients are over age 45; 23% are over 65. Most of these patients are unmarried; (married patients had shorter hospital stays), and 43.1% had a medical secondary diagnosis. To meet the legal rights required for the involuntarily admitted, VA now requires a formal review of their cases at least twice a year. Half of the patients suffering from functional psychosis and organic brain disease have stays of one year or longer. The median attained stay, however, has decreased over the last 15 years due to new forms of treatment as well as the increase of alcoholic or drug dependent patients. But in general, VA hospitals tend to keep their patients longer.

Staffing, in both quantity and in specialized training, is generally inadequate.

Many agree that almost half of those admitted do not require hospital care. Again the proportion admitted is related to bed application pressure.

GAO, as well as the committee, is critical of VA's practices of drug administration. Practices observed were generally in variance to VA's own guidelines. It was found that the hospitals prescribing the most drugs offered less psychotherapy. Treatment of alcoholism is uncoordinated and has no uniformity; few patients get good treatment.

In the psychiatric units of general hospitals, patients received better care and 5 times more professional planned treatment than patients in psychiatric hospitals who generally receive only custodial care. Only in the affiliated general hospitals was staffing for inpatient psychiatric care adequate.

Chapter Twelve: Hospital Care: Rehabilitation Medicine

While all VA hospitals provide this service, only 40 have specialized bed units. Eighteen hospitals have spinal cord injury sections and an 82% occupancy rate of June 10, 1975; only 15% of the spinal cord patients, however, received care in these units. No effort is made to separate the newly injured from those who have been there a long while. This is bad for morale and treatment motivation. Resources in all rehabilitation services

were found to be generally adequate; 88% of the physical therapy units were rated adequate.

The extent of foster home care is seriously hampered by inadequate Congressional funding.

Quality of care and hospital size are unrelated, however the busiest units provided better care. Most staff in these sections are not under the control and direction of the chief of these services.

VA provides only temporary prosthetics; permanent fittings are contracted to private firms. Two weaknesses here are that it takes a VA patient much longer to get a prosthetic device and the refilling of prescriptions is done without medical recertification of need.

Chapter Thirteen: Dental Care

Because of complex and restrictive eligibility requirements in addition to the medical orientation of VA, only a small number of VA patients have their dental needs met. Although VA's goal is to provide all patients with dental exams, only 55% of all patients received one in 1975 and 90% of the psychiatric and long term patients do not receive dental examinations. Only 24% received treatment of those examined, although 79% were found to require it. The trend is to examine only those patients VA intends to treat.

VA dental care is good but their services are inefficiently allocated. There is a high proportion of specialists but a shortage of hygienists and dental auxiliaries. Although unrushed and not overworked, too many dentists and hygienists perform services that could easily be executed by trained auxiliaries. Dental professionals are slower and spend less time at their chairs than non-VA. There is a great reluctance to re-organize the service.

There are too few dental chairs; chairs, floor space and equipment are inefficiently arranged and utilized. The VA chair occupancy rate is 37%; the non-VA rate is 56%.

The dental data system available is unable to record dental needs or program more efficient projections and re-allocation.

Chapter Fourteen: Nursing Homes and Intermediate Care

There are four long term care programs in VA: nursing homes, hospital intermediate care units, private nursing home contracts, and domiciliary - care programs. VA also subsidizes some veterans' stays in non VA facilities. In addition to the 23,000 VA patients in these services, another 7,000 in VA hospitals are receiving similar services while in different hospitals units.

Intermediate care facilities are used mostly for the care of the chronically ill and greatly disabled than for convalescence. Those not released within 5 months tend to stay many years.

VA has operated nursing homes since 1964. The occupancy rate is 96%; few patients return to "independent living" or leave within 5 months. Most residents had non-service connected disabilities and 75% had annual incomes less than \$3,000. The quality of care in VA nursing homes was rated adequate or better in half of those visited; minimal care was provided in 90% of the homes.

Intermediate care facilities are bleak and none visited were rated adequate. This is due to insensitive and inadequate staffing allocation procedures. Intermediate care units were larger and had greater workloads than the VA nursing homes.

Many of these poor ratings reflect the poor quality of this kind of care generally provided in this country.

Chapter Fifteen: Domiciliary Care

Residents of VA domiciliary care units are "socially marginal" men whose main age is 60; few are able bodied, but they generally don't require hospital or nursing care. More domiciliary care is being provided than is reported. Many patients in psychiatric beds would be more appropriately placed in these units. The average stay was 3.6 years in FY 1975; readmission rates are high.

All units need more qualified trained staff to meet the program goals. The caseload for social workers and psychologists is 1:250.

All units provide recreation facilities and are dependent to a large extent upon volunteers from the community. The rehabilitation potential in these units is very low. Cash incentive therapy programs provide more for maintenance than for therapy.

The social climate of these facilities is bleak; the relation of staff to residents is one of "benevolent paternalism" and gives little incentive for the independence of residents. Although the units provide adequate mass care, little attention is given to the individual. VA domiciliary care was rated inferior to private and military retirement homes.

Chapter Sixteen: Affiliation of VA Hospitals with Medical Schools

VA hospitals have been authorized to establish affiliation with U.S. medical schools since 1945. The majority of VA hospitals have a significant relation to medical schools and generally these affiliations have been beneficial all around. VA construction policy in the 1950's was heavily influenced by the location of medical schools in order to facilitate these affiliations. The schools' need for more teaching beds was the result of both an increase in health insurance, (which reduced the number of teaching beds), and the pressure on the schools to expand medical education. The extent of these affiliation relationships vary from token to heavy. The VA has provided 38% of all U.S. residency positions in internal medicine in 1974-75. Many residents are on rotating assignments. One third of all U.S. medical schools are moderately or highly dependent on the VA for clinical clerkships. In 27 hospitals, there was a one way dependency by VA on the schools. Although study needs to be done, these relationships have never been comprehensively examined. The most highly specialized VA hospitals are affiliated hospitals.

The greater the degree of dependency, the greater the vulnerability of both parties. The effects of national health insurance on these relationships also warrants serious study - it may well reduce the VA patient care volume and provide severe stress on some affiliation relationships. Combined with a slackening in expansion of medical education, medical schools need to re-examine their needs and affiliation relationships rapidly.

Chapter Seventeen: Inter Hospital Relations

In the decade since passage of authorization for VA to share services, the scope of sharing is very low. The legislation intended to reduce or eliminate duplication of costly medical services like open heart surgery, kidney transplants, and radiation therapy. Shared services accounted for less than 2% of VA's budget on specialized medical services. In 27 communities studied, there was only one instance where a VA hospital was the only provider of a specialized service. VA's minimum standards for the frequency of performed specialized services falls way below those recommended. For example, VA requires 32-50 open heart surgeries per year per hospital; the national recommendation is at least 200 for greatest efficiency and utilization.

The vast majority of sharing arrangements were between a VA and non-VA hospital affiliated with the same medical school. The potential for more sharing is greatest in regions where the services offered are abundant, but there is little incentive and no real mechanism to increase sharing. VA is therefore more interested in selling than buying which helps them, statistically, with the next year's budget. VA would rather transfer patients to another VA hospital than buy a service. There are equally strong disincentives for a non-VA hospital not to buy VA services except in two way deals where no money changes hands. Legally, VA cannot share non-clinical, support services.

VA has attempted to increase utilization and sharing within the VA system through their regionalization program. It is inappropriate to assume that the program will be effective; it could also reinforce separation of VA from non-VA hospitals and limit viable alternatives. Regionalization provides cheaper alternatives for a VA hospital than sharing with a non-VA hospital.

The scope of sharing legislation should be expanded to include support services. Referring non-VA hospitals should be relieved on any financial responsibility and insurers should be held obligated to pay for care provided to insured patients in VA hospitals. VA hospitals should neither gain nor lose by referrals. The VA Central Office will have to play a stronger role in promoting sharing. The VA system in general will have to work more closely with the health care system as a whole.

Chapter Eighteen: Committee Recommendations

Assuming that current eligibility requirements are essentially unchanged, the VA should meet the current health care needs of veterans by redistributing resources currently available. Consideration must be made of the following three developments: demographic changes within the veteran population, the potential effect of national health insurance, and the increase in regional and community health care planning.

VA Role

VA policies and programs should be designed so that the VA system will ultimately be phased into community health care services. This can be done in four phases: a) Financial - VA should be reimbursed by third party insurers wherever available, must adopt a uniform system of accounting, and be subjected to the same budgetary review required under Medicare and Medicaid. b) Planning - All VA construction and installation of new equipment and services should be recommended by the local Health Systems Agency, (HSA), including the 8 recently approved hospitals. c) Medical services phase-in - VA should develop demonstration projects of model

integrated care that, if successful, can be later expanded.

d) Long-term care phase-in - VA should attempt to merge its long-term care facilities with the non-VA programs.

Hospital Care: General

In examining and evaluating hospitals with low bed applications, those with fewer than 20 per bed might be considered for conversion to long-term care facilities.

Rigorous procedures for admissions and utilization review should be developed and implemented within the VA system. As many as 25% of acute beds could be eliminated within 3 years.

Medicine

Internal medicine services of psychiatric hospitals must be improved, if only by contracting with non-VA hospitals.

Surgery

Patients admitted for surgery need more careful screening; pre-operative stays should be reduced 1 or 2 days. Outpatient surgery should be developed for minor procedures.

Cardiac and kidney transplant operations should be concentrated into fewer hospitals to meet the Joint Commission on Accreditation of Hospitals (JCAH) standards.

Because of the poor quality of surgery performed in psychiatric hospitals, this service should be eliminated. In all general surgery, residents should be supervised by a staff surgeon as well as in 70% of emergency surgery.

Psychiatry

Because so many inpatients are inappropriately assigned, VA must develop and implement alternatives to inpatient hospitalization. In addition, care should be taken to coordinate with community planning and to integrate programs where possible. Outpatient mental health facilities and staff should be expanded.

The incorrect and inappropriate use of psychoactive drugs must be corrected immediately through education and quality-assurance review.

Inpatient psychiatric care needs improvement, including an organized quality assessment, utilization review, and internal and external peer review in psychiatric hospitals. Improvements would result from an aggressive recruitment of highly qualified personnel, continuing education of staff, and special training programs in geriatrics and gerontology.

Periodic administrative reviews of involuntarily committed patients must be rigorously enforced and a report to Congress should be made within 2 years.

Comprehensive treatment of alcoholic, both inpatient and outpatient services, must be expanded and developed.

Rehabilitation Medicine

Because this involves a multi-disciplinary approach, all personnel assigned to this service should be under the direction of the chief of this unit. Also, these services should be concentrated in fewer centers of higher quality and only serve patients with rehabilitation potential.

Patients in spinal cord injury units should be separated into two groups: those likely to be rehabilitated and returned to the community and those likely to remain for long periods.

Improvements must be made in the delivery time required for prosthetic devices. The VA should require medical recertification of all such devices.

Dental Service

Dental service needs re-organization for full utilization. More dental auxiliaries are needed and should be recruited. Productivity can be raised but VA cannot meet its goals without greater funding. Instead, the scope of VA's dental responsibilities should be narrowed to:

- ° all long term patients,
- ° all patients in the demonstration integrated care project,
- ° all emergency dental care of inpatients all those who have service-connected disabilities of the mouth.

Long Term Care

Because more and more veterans will be requiring long term care, and because alternatives are less available outside of VA, VA must take the lead in developing new long term care programs and develop alternatives to institutionalization.

Affiliated hospitals provide higher quality care and should be especially encouraged to affiliate with schools that have strong programs in gerontology and geriatrics. Congress should encourage VA to explore increasing the states' role in providing long term care for veterans. Some VA hospitals with low admission rates might be converted to state run homes for veterans.

Staffing

Adopting and refining assessing procedures for appropriate and sensitive staffing methods must be done.

Affiliations

The VA, in cooperation with medical schools, must undertake a careful study of these relationships, especially as they might be affected by imminent changes.

Regionalization and Sharing

New incentives are needed to increase and enhance sharing with non-VA hospitals. VA hospitals should not be required to pay for the treatment of patients in nonfederal hospitals. VA Central Office could establish a special fund for such incidents.

VA hospitals should adopt JCAH minimal utilization standards and those facilities that fall below these standards should be phased out and patients referred elsewhere. VA's authority for sharing should be expanded to include support and other specialized medical services. The tax code should be amended so that VA is able to purchase such services from voluntary hospitals.

The VA Department of Medicine and Surgery should be made responsible for developing a management system that can meet all current needs.

THE WHITE HOUSE
WASHINGTON

September 14, 1977

Bob Lipshutz

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

cc: Stu Eizenstat
Frank Moore
Jack Watson
Tim Kraft

CONGRESSIONAL VETO MATTER

THE WHITE HOUSE
WASHINGTON

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<input type="checkbox"/>	EXECUTIVE ORDER
<input type="checkbox"/>	Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

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THE PRESIDENT HAS SEEN.

**Electrostatic Copy Made
for Preservation Purposes**

THE WHITE HOUSE

WASHINGTON

August 29, 1977

Bob
C
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MEMORANDUM FOR THE PRESIDENT

FROM: Bob Lipshutz *BL*
SUBJECT: Congressional Veto Matter

As you are aware, I have been working closely with the Justice Department and my own staff concerning this overall matter for the past several weeks. At our request, the Justice Department did indepth research in this area, both legally and historically.

In addition, at our request they have recently prepared a memorandum recommending an Administration policy concerning this matter. We of course are sharing this information with Stu Eizenstat. Griffin and Stu and I will be able to submit a recommendation to you within the next few days concerning an overall policy.

As was mentioned briefly at the Cabinet meeting this morning, there are three alternative approaches which could be made in this area:

1. The right of one House of the Congress to veto specific actions of Executive Departments or Agencies;
2. The action of both Houses of Congress for the same purpose, but without any participation by the President;
3. Action by both Houses of Congress, but also requiring action by the President in a manner similar to the enactment of legislation.

One of the major questions which I have submitted to the Justice Department and which has not yet been answered is the following which may be the basis of a policy position that you would find desirable in those cases where any type of Congressional review of Executive action was deemed appropriate:

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The feasibility of a provision in such legislation which would allow both Houses of Congress to move much more expeditiously than it usually does in reviewing such applicable Executive actions, which would require negative resolutions by both Houses of Congress, and which at the same time would preserve the usual right of Presidential veto.

I do not know if you wish to review the detailed memorandum which has been prepared for us by the Justice Department, but I am attaching same for your reference, from which I have eliminated all of the footnotes.

In addition, I have an earlier document from the Justice Department which sets out the historical data and current analysis of legislation in this field. Should you desire to see any of these additional documents, please advise.

I would like to urge that you and Griffin and Stu and I get together at an early date, prior to your making your final decision in this matter and prior to your proposal being submitted to the Cabinet Secretaries for their comments. After that I assume that you would wish to discuss it in detail with the Speaker and the Majority Leader.

ok
JC

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Office of the Attorney General

Washington, D. C. 20530

AUG 12 1977

MEMORANDUM TO HONORABLE ROBERT J. LIPSHUTZ
Counsel to the President

Re: Administration Policy Re
Legislative Veto Provisions

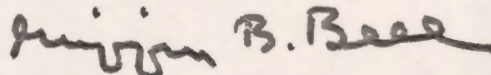
Attached is a memorandum prepared by the Office of Legal Counsel which addresses the legal and policy questions raised by legislative veto provisions. The memorandum recommends that this Administration take positive action to bring to an end Congress' escalating practice of attaching legislative veto provisions to a wide variety of legislation. For reasons stated in the Office of Legal Counsel's Report on Legislative Vetoes, dated August 1, 1977, it is our view that such legislative incursions are unconstitutional. As you are aware, over the last several months the Office of Legal Counsel has been assessing the dimensions of the problem and has been considering a series of alternative ways in which to deal with that problem. This memorandum is the product of that undertaking. It recommends that this Administration make clear its constitutional opposition to the legislative veto mechanism. With respect to laws presently on the books it recommends that the affected departments and agencies treat those laws as imposing no more than a "report-and-wait" requirement. With respect to enrolled bills coming to the President, the memorandum recommends that, on a case-by-case basis, close consideration be given to the advisability of a Presidential veto of bills containing certain particularly onerous legislative veto provisions and, at least, a strongly worded Signing Statement for other bills providing for

Honorable Robert J. Lipshutz

Page 2

legislative veto. Finally, in implementing these recommendations, the memorandum emphasizes the importance in continuing to search for ways to promote an early judicial resolution of the underlying constitutional questions.

I concur in these recommendations.

A handwritten signature in dark ink, appearing to read "Griffin B. Bell". The signature is fluid and cursive, with the first name "Griffin" written in a more stylized, connected manner.

Griffin B. Bell
Attorney General

Department of Justice
Washington, D.C. 20530

AUG 11 1977

MEMORANDUM FOR THE ATTORNEY GENERAL

Subject: Administration Policy Regarding Legislative
Veto Provisions

This memorandum addresses the legal and policy questions raised by legislative veto provisions, including those currently in force and those in bills pending before the Congress. Such provisions are, in our view, clearly unconstitutional; they do violence to the doctrine of separation of powers and interfere with the proper exercise of the President's veto power under Art. 1, § 7. 1/ However, there has not been an authoritative judicial resolution of this constitutional question. Until this form of Congressional action has been subjected to full court review, the Executive Branch must determine the manner in which it will assert its disagreement with Congress over the propriety of the legislative veto.

The following sections of this memorandum outline the elements of the policy which we believe the Executive Branch should adopt. In sum, that policy calls, first, for treating legislative veto provisions in existing legislation as "report-and-wait" requirements only. It should be made clear in every case that Congress' advice is being sought as a matter of comity but that final authority remains with the Executive Branch. Secondly, where bills containing legislative veto provisions are pending in Congress, the Executive Branch should make clear its continuing fundamental constitutional opposition. Thirdly, whenever bills containing such provisions reach the President, a careful case-by-case examination should be undertaken to determine whether he should exercise his veto power or whether -- at the least -- he should issue a signing statement expressing his view that Congress has legislated in an

unconstitutional manner. Finally, in implementing this strategy the Executive Branch should continue to pursue, whenever reasonably possible, the earliest judicial resolution of this constitutional dispute.

I. Existing Statutes

Legislative veto provisions contained in statutes currently in force may be responded to by the Executive Branch in several different ways. Before outlining those options, the present situation should be placed in historical perspective.

A. Historical Practice

Executive response to the exercise by Congress of its claimed legislative veto power has been characterized in most cases by acquiescence. In recent years for instance, congressional vetoes of the General Services Administration regulations have been honored. 2/ Likewise, congressional resolutions disapproving budget deferrals have been accepted and committee disapprovals of reprogramming decisions have been given effect by Executive departments and agencies on a routine basis. 3/ We have also been advised that the usual practice followed by Executive Branch departments and agencies has been to consult frequently, and to work closely with, those congressional committees possessing the supposed power eventually to force a veto of disfavored Executive actions. Consequently, the fear of congressional interruption of Executive programs has come to play an important role in the decisionmaking process. Inevitably this process has -- at least occasionally -- affected the substance of the advice and recommendations submitted to the President

by his subordinates. 4/

The practice of compliance and acquiescence has not been universal. Occasionally, Presidents have announced their constitutional objection to legislative veto provisions and have instructed their subordinates to disregard those provisions altogether (examples will be discussed infra). Additionally, whenever presented with the opportunity in the course of litigation, the Department of Justice has consistently expressed its view that the legislative veto is unconstitutional. See, e.g., Atkins v. United States, 41-76 (Ct. Cl., May 18, 1977). Thus, it can be seen that the Executive Branch's response historically has not been a consistent one. Nothing in the historical record, however, forecloses the Executive Branch from adopting at this juncture an orderly and consistent response. With respect to existing statutes we have identified the following several options.

B. Option 1: Disregard Legislative Veto Provisions Entirely

Since it is the Executive Branch's view that all legislative veto provisions are unconstitutional, 5/ the President could direct all affected departments and agencies to disregard those provisions entirely. Thus, where the underlying statute

calls for some form of Executive action (e.g., the issuance of regulations) but conditions that action upon congressional review and approval, the President might instruct the appropriate Executive Branch decisionmakers to take the prescribed action without consultation with or review by Congress.

While in our view this alternative is within the President's constitutional prerogative, 6/ we question its advisability. First, such an action invariably carries with it the appearance of Executive defiance of the law. Secondly, it is a course likely to occasion the greatest adverse reaction from Congress and is, therefore, one calculated to create a confrontation. For reasons discussed in more detail later in this memorandum, there may not be a readily available means of judicially resolving such a confrontation. We cannot predict what the dimensions of the complications and dislocations would be in the event of a toe-to-toe confrontation, but the potential problems may well outweigh the potential gains. 7/ Finally, we feel a complete disregard for Congress' interest ought to be avoided where there exists a more moderate, yet effective response. Option 2, we think, provides one such alternative response.

C. Option 2: Treat "Veto" Provisions as "Report-and-Wait" Requirements Only

Rather than disregarding congressional veto provisions ab initio, the Executive Branch could treat those measures as imposing on it only the requirement that Congress be advised of proposed Executive action in advance and that Congress be given an opportunity to respond by passing further legislation. In most cases this option has much to recommend it. As stated in our August 1 Report, reasonable "report-and-wait" provisions in existing statutes have been regarded as constitutional. 8/ They do not carry the same constitutional infirmities found in those provisions which purport to confer upon Congress the legal authority to block Executive action. An undertaking to "report" proposed action and to "wait" a reasonable period before finalizing that action is more than a formalism. Congress would, as a result of the reporting, have an opportunity to decide whether it disagrees with the proposed action and, if so, to prevent that action (or to alter it) by appropriate legislation -- legislation which would be subject to Presidential veto. In most cases we think it likely that there will be no substantive congressional opposition to the proposed Executive action and in those cases confrontation can be avoided. 9/

If this course is adopted we regard it as important that the appropriate congressional committees be advised that the President's compliance is limited to the "reporting" and "waiting" functions and that whatever response is forthcoming from Congress must be regarded as advisory only. The Executive Branch must make clear that the ultimate authority to act or not to act is being preserved and is not being delegated to Congress. Unless this point is clearly maintained there is the potential that "reporting" and "waiting" may lead informally to a de facto practice of acceding to legislative vetoes.

One case in point deserves mention. Under the Presidential Papers Act of 1974 (§104(a) of Pub. L. No. 93-526), the General Services Administration has heretofore submitted proposed implementing regulations to Congress on three separate occasions. In two cases Congress has rejected the proposed regulations and returned them to the GSA for revision; in the third case the regulations were withdrawn by GSA. On June 2, 1977 GSA submitted to Congress its fourth set of proposed regulations. We are informed that, because this most recent set of regulations was drafted only after close and extensive negotiation with the pertinent House and Senate committees, no veto is anticipated.

We have also been informed, however, that partially in response to the Supreme Court's recent decision involving President Nixon's papers, GSA may think it desirable to revise this fourth set of regulations to a substantial degree. GSA may well be reluctant to do so precisely because it may fear that such revisions will be met by a congressional veto. Consequently, the process of "reporting" and "waiting" may cause the GSA to issue regulations which do not reflect that agency's best judgment of the means by which to implement the statutory mandate to establish regulations governing access to those papers. If that is in fact the case the misallocation of constitutional function which inheres in the legislative veto process will have occurred. To prevent this result in other cases Executive authorities should make certain at the outset that the "report and wait" does not lead to an abdication by this branch of the government of its constitutional responsibility.

Although this is the course which we would recommend in dealing with most existing legislative veto provisions, there are several important caveats. First, we would not recommend such an accommodating approach where the statutory veto provision touches upon an area within the President's exclusive constitutional prerogative. For instance, if Congress were to impress a legislative veto provision upon the Executive's constitutional pardon power, requiring him to delay the issuance of pardons pending congressional review, the act of congressional intrusion in an area in which it has no constitutional responsibility would likely be regarded as so clearly inappropriate as to call for the Executive's complete disregard.

Secondly, there may be instances in which the delay occasioned by complying with a statutory "waiting" provision will substantively interfere with the Executive Branch's fulfillment of its proper function. While we are unaware of any provisions in existence today which have that probable effect, adoption of this policy should not be understood as constituting an acceptance of any such overly burdensome waiting requirement.

Thirdly, it is important to recognize that the adoption of this recommended option carries with it one significant possible disadvantage. Because "reporting and waiting" may avoid confrontations, opportunities to achieve early judicial review and resolution may be lost. As we stated at the outset, one of the central considerations in any strategy to deal with the legislative veto must be to secure an ultimate court resolution. The continuing tension between the Legislative and Executive Branches, and the resulting uncertainty in the implementation of legislation, are the unwanted progeny of this unresolved dispute. This caveat leads us to the recommendation that, on a case-by-case basis, the Executive Branch should consider whether the likelihood of provoking a judicial test is sufficiently high to warrant a more vigorous response to a particular legislative veto provision than simply regarding it as a "report and wait" requirement. There may be cases in which confrontation triggered by disregarding completely a "veto" provision may ultimately serve as the vehicle for bringing about a judicial decision determining finally the constitutional questions. The Department of Justice should work closely with those other Departments and agencies affected by legislative veto provisions to identify cases that might provide such a vehicle. 10/

Finally, without undercutting the general application of this option, it should be recognized that a "report-and-wait" option may only be implemented on a case-by-case basis. That is, before an Executive Branch Department or Agency advises Congress that it will regard a particular legislative veto provision as a "report-and-wait" requirement only, there must be a legal determination that the provision in question is, in fact, a legislative veto provision. In our experience there are statutory provisions which might appear upon a cursory examination to raise the constitutional questions we have identified as inherent in legislative vetoes, but which upon closer study turn out not to involve genuine constitutional problems. Similarly, there may be some small number of statutory provisions that are not so clearly unconstitutional as is the usual legislative veto provision, and in such cases the Executive Branch might not wish to assert without reservation its opposition to Congress' view. In order effectively to screen these provisions we recommend that this Office assume the responsibility for consulting with affected departments and agencies before the "report-and-wait" option is announced in any particular case.

D. Option 3: Oppose the Legislative Veto Only Within the Confines of Litigated Cases

The remaining alternative would be to endeavor whenever possible to eschew controversy and confrontation with Congress by limiting the Executive Branch's opposition to legislative veto provisions to cases which are filed by third parties.

The Department of Justice could continue to urge in court the Executive Branch view that these provisions are unconstitutional while in all other situations the Executive might simply endeavor to comply with Congress' desires. This option has the advantage of avoiding a clash with Congress except within the traditional judicial framework. It reflects a high respect for Congress' view of the constitutionality of its actions. Additionally, there is ample precedent for the President's lawyers to argue in court the unconstitutionality of laws, even though the Chief Executive has not seen fit for policy reasons to disregard or disobey those laws pending judicial resolution. 11/

There are, however, substantial disadvantages to this approach. Most importantly, there are simply very few opportunities to litigate the legislative veto provision's constitutionality. There are, to our knowledge, only two statutory "veto" provisions which are presently being challenged in court. The first is the Federal Salary Act's legislative veto proviso challenged in Atkins v. United States, No. 41-76 (Ct. Cl., May 18, 1977), petition for cert. filed Aug. 8, 1977 (No. 77-214). This is a suit brought by federal judges who were denied a pay raise because Congress exercised a legislative veto over a raise approved by the President under the Federal Salary Act. The Court of Claims, by a 4-3 vote and contrary to the argument made by the Department of Justice, held the legislative veto to be constitutional in the narrow context of the Salary Act. There is at least one significant problem with relying on this case as the vehicle for Supreme Court adjudication of the constitutionality of the legislative veto. The Department made the argument in the Court of Claims that the "veto" provision was not severable from the remainder of the Act and that, therefore, the entire legislative scheme was unconstitutional. While the majority of

the Court of Claims did not reach the severability issue, 12/ there is support for the conclusion that the courts should address severability before passing on the underlying constitutional questions. If the Supreme Court were to find the "veto" provision not fairly severable from the remainder of the statute, it could then decide that the aggrieved judges would not benefit in any event from a favorable decision since the whole act -- salary increases and all -- would be voided.

Indeed, this is precisely the tack taken two weeks ago by the Fourth Circuit Court of Appeals in rejecting another challenge to the Federal Salary Act. 13/ The point in emphasizing here this "catch-22" created by the severability issue is to emphasize the difficulty generally in achieving definitive judicial rulings in this area and to suggest that Atkins may not prove the most efficacious vehicle for resolving the constitutional question.

The other pending case in which the legislative veto issue is squarely presented is Chadha v. United States, Civ. No. 77-1702 (9th Cir. petition for review filed March 24, 1977). In that case, the petitioner who was facing a deportation order was granted a suspension of deportation by an Immigration Judge pursuant to §244(a)(1) of the Immigration and Nationality Act, 8 U.S.C. §1254(a)(1), only to have that grant "disapproved" by a one-House resolution passed by the House of Representatives. The result of this "disapproval," if valid, would be to reinstate the deportation order originally issued. The petitioner in his petition for review in the Ninth Circuit has raised the constitutionality of the one-House veto as his sole argument for blocking his deportation. The Department anticipates filing a response in late August supporting the petitioner's argument against the constitutionality of the legislative veto provision.

Neither Atkins nor Chadha present what we think would be "ideal" cases for review. It is possible in both cases for the courts to conclude that the exercise of the veto -- under the particular statutes involved -- was an appropriate exercise of Congress' constitutional responsibilities without reaching the broader question of the constitutionality of legislative vetoes in other contexts. Additionally, while Chadha does not involve a serious severability problem, there is the troublesome fact that Congress has at least since 1940 assumed that it possessed the power to veto decisions suspending deportation orders. Indeed, INS estimates that there has been at least one congressional veto of an order suspending deportation in every session of Congress since 1970. The Executive Branch has acquiesced in that practice for the last 37 years. 14/

These cases point up one of the central drawbacks with adoption of Option 3: a definitive judicial decision may be far off in the future absent a concerted effort by the Executive Branch to tailor a case or cases for early review.

The Chadha case illustrates a second disadvantage to continued compliance with legislative veto provisions. As a matter of litigation strategy it is always more difficult to challenge the constitutionality of statutes which the Executive Branch has honored without question for an extended period of time. For this reason we think it important that the Executive's opposition to the encroachments occasioned by legislative vetoes be frequently and consistently articulated. Treating such provisions as "report and wait" provisions only, when that view is embraced by the Executive Branch publicly, adequately accomplishes this goal.

The remaining question engendered by a practice of Executive compliance with all legislative veto provisions is one of constitutional dimension. The Chief Executive has the clearly sworn duty to uphold the Constitution. While due respect for Congress may compel some deference to the views of that branch on the constitutionality of the "vetoing" process, we doubt whether the Chief Executive properly can adopt Congress' interpretation and act accordingly without independently considering and determining how he would resolve the constitutional question, and having concluded that such provisions are unconstitutional, we think any decision not to act on that conclusion must be premised upon substantial countervailing considerations. The "report and wait" option achieves an acceptable balance; there are substantial questions about Option 3 in this regard. 15/

II. Legislative Vetoes in Pending Bills

While a range of policy options may be identified for dealing with existing statutory "veto" provisions, we think that a single preferable policy emerges from a consideration of bills that have not yet been enacted into law. Prior to the time that a bill reaches the President's desk we believe that the uniform practice of all Executive Departments and agencies should be one of announced opposition to any constitutionally suspect legislative veto provisions. 16/ Whether in testimony before congressional committees, or in response to requests for agency comments, or in informal communications with Congress, the Executive Branch's view should be stated and reaffirmed.

This policy may prove more difficult to implement than might be expected. Prior experience indicates that some agencies may be willing to accept tacitly the inclusion of a legislative veto device as the price for a delegation of authority that Congress might otherwise be unwilling to make to that agency. Whatever short-run benefits might be realized from such "cooperative" arrangements they are far outweighed by the institutionalization of a constitutionally suspect practice. More importantly, given our recommendation that the Executive Branch refrain from treating such provisions as anything more than "report and wait" requirements in most cases, we would not wish to place the Executive Branch in the apparently disingenuous posture of approving of the bill and only later disapproving of it when it becomes law. 17/

Once a bill reaches the President's desk he must address the difficult question whether to veto it on the ground that it contains one or more constitutionally objectionable legislative veto provisions, or to take some less dramatic step, e.g., issuing a signing statement highlighting his concern about the "veto" provision or provisions. On this question it is plainly not possible for this Office to determine which bills should, and which bills should not, be vetoed. That decision obviously will require the consideration of a broad range of factors, some of which will have nothing to do with the legal and constitutional issues. We can, however, list the circumstances that would suggest the desirability of a Presidential veto.

(1) A Presidential veto might be appropriate where the legislative veto provision arises in a bill that is not likely to be amenable to subsequent judicial review. For the reasons stated earlier in this memorandum, we retain substantial doubt about the advisability of the President's unilaterally disregarding such provisions once enacted. 18/ If the President is to disregard completely a law that is not likely to be amenable to judicial review, the President's position on unconstitutionality would be considerably stronger had he clearly notified Congress in advance of his constitutional opposition and had required Congress to pass that law over his veto.

(2) In cases in which it is likely that the legislative veto provisions in an enrolled bill are not going to be regarded as severable from the substantive provisions of that bill, a Presidential veto becomes even more advisable. Since Congress, in such cases, has expressed its unmistakable intent that the entire statutory framework should fall unless the legislative veto provision is upheld, the Executive Branch would find itself in a difficult posture. On the one hand, the substantive legislation might be important to the Administration. On the other hand, treatment of these statutory "veto" provisions as simple "report and wait" requirements would run afoul of Congress' express desire that the statutory program only be implemented after Congress' review and failure to object. 19/

(3) With respect to those bills which have as their dominant purpose granting to Congress a legislative veto power, the importance of a Presidential veto is apparent. Included within this category of bills are H.R. 959 introduced by Congressman Levitas in the current Congress and similar bills that would render all Executive Branch rulemaking subject to congressional disapproval. Another example is S. 1251, introduced (but not passed) in the 94th Congress which would have subjected all Executive Agreements to legislative veto.

(4) One variation of the legislative veto, by its terms, would give Congress the authority affirmatively to amend regulations or other Executive Branch decisions and to give those amendments the force of law. Thus, Congress would be going beyond simply disapproving Executive action with which it disagrees. Instead, it would be writing law through the review process without Presidential review and possible veto. 20/ We regard such bills as particularly objectionable and, because they confer in stark terms a congressional power to legislate without the Presidential veto safeguard, they are particularly good candidates for Presidential disapproval.

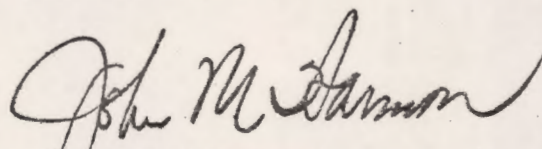
(5) Perhaps even the strongest case of all can be made for Presidential veto of bills that give formal veto power to congressional committees. Whatever the Constitution permits, it surely does not allow government by congressional committee. President Eisenhower vetoed virtually every committee veto bill that came to him and was successful in steering Congress away from this device. 21/

In cases in which the President determines that a veto is not appropriate, a strongly worded Signing Statement should be an acceptable alternative. 22/ At the least any such Statement should identify the President's opposition to the legislative veto provision or provisions. The Statement may also serve as an appropriate occasion upon which to announce how the Executive Branch will treat the unconstitutional provisions in that law, i.e., whether they will be disregarded entirely or whether they will be regarded as imposing no more than a "report and wait" obligation on the Executive Branch. 23/

III. Conclusion

Because of the many varieties of legislative veto provisions and because those provisions arise in a wide range of circumstances, it has not been possible at this stage to do more than to identify alternatives and to suggest a general approach. In summary, that approach would call for the following:

(1) consistent Executive Branch articulation of its constitutional opposition to such provisions; (2) consideration on a case-by-case basis of the advisability of vetoing bills reaching the President which contain legislative veto provisions; (3) a consistent practice of regarding such provisions in existing statutes as imposing no more than a "report and wait" requirement; and (4) a search for opportunities to promote an early judicial resolution of the constitutional questions. In implementing this broad outline this Office may be of assistance by continuing to monitor bills in Congress and by making sure that the affected Executive Branch entities are aware of provisions potentially affecting them. Additionally, as to existing laws, some office within the Executive Branch should undertake to communicate with affected agencies and departments to assure that they are apprised of the impact of this Administration's policy regarding those "veto" provisions which have been enacted.

A handwritten signature in dark ink, appearing to read "John M. Harmon". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John M. Harmon
Assistant Attorney General
Office of Legal Counsel

11:30 AM

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

September 12, 1977

MEETING WITH SENATORS WENDELL R. ANDERSON
AND DALE BUMPERS AND WITH SECRETARY ANDRUS

Wednesday, September 14, 1977
11:30 a.m., (20 minutes)
Oval Office

From: Stu Eizenstat
Frank Moore

Stu
F.M.

I. PURPOSE

To discuss Senators Bumpers' and Anderson's concerns about the provision for protection of private surface owners over federal coal in the Strip Mine Bill.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: Senators Bumpers and Anderson asked that you veto the Strip Mine Bill because of what they viewed as an improper provision on surface owner consent. Senator Bumpers has recently discussed this matter with Secretary Andrus in detail.

B. Participants: Senators Bumpers and Anderson and Secretary Andrus.

C. Press Plan: White House photo only.

III. TALKING POINTS

- Background on the "written consent" provision:
 - Agricultural surface owners over federal coal who derive a significant part of their living from the land and who have lived on their land for at least three years are entitled to approve or deny the leasing of their land for strip mining through a "written consent" procedure.

- There is no limitation on monetary compensation for consenting owners, leading some to fear that consenting landowners will reap "windfalls." (Others argue that the coal/land market in the West is glutted and that this fear is exaggerated.)
- The previous strip mine bill as vetoed by President Ford did contain a limitation on compensation for consenting landowners. The Administration supported retention of such limitations.
- A protective provision is needed because under the Homestead Laws, mineral rights were retained by the government, so the split ownership situation is common in the West.
- Background on Senator Bumpers' involvement:
 - Senator Bumpers supported giving the Secretary authority to override the wishes of surface owners, but this would have removed the right of written consent rather than simply limiting compensation.
 - His amendment passed in the Senate but failed in conference. He then unsuccessfully attempted to recommit the conference bill.
- Secretary Andrus' and Senator Bumpers' proposed course of action:
 - During the initial years of implementation, refrain from leasing very much federal coal which occurs in this split ownership situation (this will not be a hardship because of the very large federal coal holdings already leased by the companies); and
 - In two or three years, attempt to pass an amendment to the Strip Mine Law which would limit compensation to consenting landowners (this timing might be appropriate for other strengthening amendments to the Strip Mine Law, after some operating experience has been achieved).

THE WHITE HOUSE.

WASHINGTON

September 12, 1977

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THE WHITE HOUSE
WASHINGTON
September 14, 1977

Frank Moore

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

cc: Bert Lance
Peter Bourne

RE: ODAP

THE WHITE HOUSE
WASHINGTON

<input type="checkbox"/>	FOR STAFFING
<input type="checkbox"/>	FOR INFORMATION
<input checked="" type="checkbox"/>	FROM PRESIDENT'S OUTBOX
<input type="checkbox"/>	LOG IN/TO PRESIDENT TODAY
<input type="checkbox"/>	IMMEDIATE TURNAROUND

ACTION	FYI	
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<input type="checkbox"/>	<input type="checkbox"/>	SCHULTZE

<input type="checkbox"/>	ENROLLED BILL
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<input type="checkbox"/>	CAB DECISION
<input type="checkbox"/>	EXECUTIVE ORDER
	Comments due to
	Carp/Huron within
	48 hours; due to
	Staff Secretary
	next day

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<input checked="" type="checkbox"/>	BOURNE
<input type="checkbox"/>	BRZEZINSKI
<input type="checkbox"/>	BUTLER
<input type="checkbox"/>	CARP
<input type="checkbox"/>	H. CARTER
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<input type="checkbox"/>	PRESS
<input type="checkbox"/>	SCHLESINGER
<input type="checkbox"/>	SCHNEIDERS
<input type="checkbox"/>	STRAUSS
<input type="checkbox"/>	VOORDE
<input type="checkbox"/>	WARREN

THE PRESIDENT HAS BEEN

Frank
J

4 August 1977

The Honorable Charles B. Rangel
2432 Rayburn House Office Building
Washington, D.C. 20515

Dear Charlie:

regarding the President's recommendations on the drug abuse policy.

Although I was not aware of any plan to abolish ODAP, rest assured
that I will bring it up the next time I meet with the President.

With warmest regards,

Sincerely,

The Speaker

H/rh

Electrostatic Copy Made
for Preservation Purposes

CHARLES B. RANGEL
19TH CONGRESSIONAL DISTRICT
NEW YORK

NEW YORK STATE WHIP

2432 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
TELEPHONE: 202-225-4365

GEORGE A. DALLEY
ADMINISTRATIVE ASSISTANT

PLEASE RESPOND TO
OFFICE CHECKED:
☒ WASHINGTON
☐ NEW YORK

Congress of the United States
House of Representatives
Washington, D.C. 20515

August 3, 1977

COMMITTEE:
WAYS AND MEANS
SELECT COMMITTEE ON NARCOTICS
ABUSE AND CONTROL

DISTRICT OFFICES:
55 WEST 125TH STREET
NEW YORK, NEW YORK 10027
TELEPHONE: 212-348-1600

720 COLUMBUS AVENUE
NEW YORK, NEW YORK 10025
TELEPHONE: 212-850-1500

MS. VIVIAN JONES
DISTRICT ADMINISTRATOR

The Honorable Thomas P. O'Neill, Jr.
Speaker
United States House of Representatives
H205 Capitol
Washington, DC 20510

AUG 04 1977

Dear Mr. Speaker:

I was shocked and disappointed that the President of the United States would recommend that the Office of Drug Abuse Policy (ODAP) be abolished at the same time that he brings to the Congress his message calling for a national policy against drug abuse. In past administrations, we have seen no coordinated activity within the executive branch of government to adequately deal with this ever-spreading epidemic that is destroying family life and increasing the already high incidence of crime. The August 2nd message on drug abuse, sent to the Congress, which stresses the need for definite initiatives for combatting crime, coordinating domestic and international programs, as well as support from the United Nations constantly refers to studies and recommendations that will be made to the Congress. Yet it is ironic that the very office that has the responsibility for making those recommendations is now scheduled to go out of business, because of the indifference of past administrations to the concerns of the Congress as they relate to drug abuse. On March 20, 1976, the Congress passed legislation that created the Office of Drug Abuse Policy. On June 1st of the same year, the Congress appropriated \$250,000 for the transition quarter and sent President Ford a message asking that ODAP be established and an inclusion of \$2 million to be appropriated in 1977.

In January, President Carter decided to establish the office as a first step toward coordinating the federal effort against drug abuse. Now with one sweeping policy, the President proposes to abolish our leg-

Honorable Thomas P. O'Neill, Jr.
August 3, 1977
Page 2

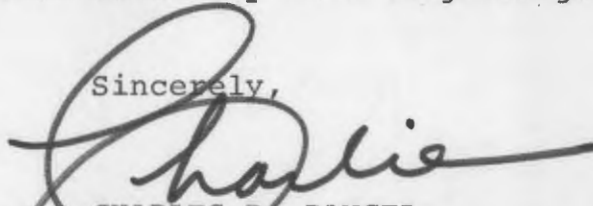
islative input and have us to once again rely on his personal commitment and that of his assistant Dr. Peter G. Bourne. On July 12 and 13, extensive hearings were held by the Select Committee on Narcotics Abuse and Control, chaired by Congressman Lester L. Wolff, and testimony was given to the committee outlining the President's policy against drug abuse and his close working relationship with Dr. Bourne, as well as with Ms. Mathea DeFalco and Dr. Robert Dupont, Director of the National Institute on Drug Abuse. Yet, it has become abundantly clear that, notwithstanding this, none of the witnesses before our committee had any idea that ODAP would be abolished. The Congress would not have any oversight authority nor could we specifically oversee any legislative mandate within the Domestic Council, which the President has designated to assume ODAP's responsibilities. While the President has expanded his drug abuse policy to include barbituates, sedative-hypnotic drugs, and alcohol, as well as tobacco addictions, he, at the same time, has restricted the number of staff people to work in these areas. In fact, it appears that Dr. Peter G. Bourne will be assuming responsibility over mental health as well as international health matters, but with a more limited staff than he had with the Office of Drug Abuse Policy.

Mr. Speaker, it took the Congress too long to get this office from the Ford administration, even with a white paper, for us to now wait for further studies. I think this completely disregards the responsibility of the Congress, if we are ever going to establish a national policy that relates to drug addiction and abuse. The Congress has a duty to specifically assign that responsibility to a distinct entity that can be held accountable to us, as well as to the American people. Anything less than this would cause a continuation of multi-federal agency responsibility without accountability. Mr. Carter has made it clear that he intends to take a personal interest in the problems of drug abuse, but, Mr. Speaker, this does not mean that the Congress has to relinquish its responsibilities. By abolishing this small ODAP staff, we will guarantee the erosion of the confidence that the American people have in the government's priority to deal effectively against drug abuse. Mr. Speaker, I ask you to use your good offices to persuade the President to amend his reor-

Honorable Thomas P. O'Neill, Jr.
August 3, 1977
Page 3

ganization recommendations and to strengthen, not weaken, the Office of Drug Abuse Policy. This would allow us to support the reorganization authority this Congress gave to our new President.

Sincerely,

A large, stylized handwritten signature in dark ink, appearing to read "Charlie".

CHARLES P. RANGEL
Member of Congress

CBR:nw

cc: Congressman Jack Brooks
Senator Abraham A. Ribicoff

Congress of the United States
House of Representatives
Washington, D.C. 20515

August 4, 1977

The Honorable Thomas P. O'Neill, Jr.
Speaker
United States House of Representatives
H205 Capitol
Washington, DC 20515

Dear Mr. Speaker:

We urge you to use your good office to advise the President to reconsider his recommendation to abolish the Office of Drug Abuse Policy (ODAP).

The Congress created ODAP to develop a national drug abuse policy and to finally coordinate the 50 departments, agencies, bureaus and administrations of the executive branch having jurisdiction over drug trafficking and drug abuse.

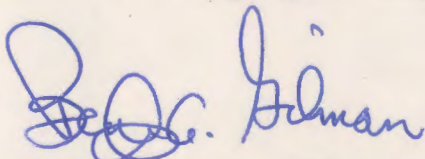
When President Carter took office, he supported the decision and, for the first time, the Congress and the nation had hopes that progress was being made.

Now, with less than five months existence, ODAP is being charged with the responsibility to research, study and make recommendations to the Congress and then, at the end of the year, go out of business.

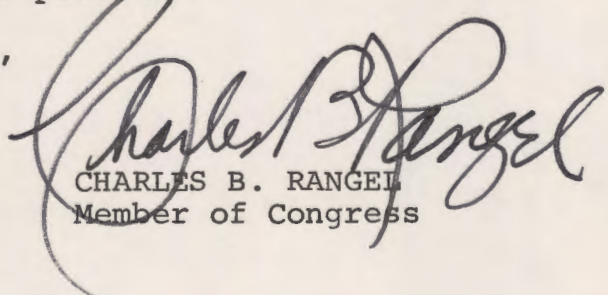
Mr. Speaker, it has taken us too long to get our national narcotic problem on the executive agenda for the Congress to recede to the President's request.

We urge your support of our position.

Sincerely,



BENJAMIN A. GILMAN
Member of Congress



CHARLES B. RANGEL
Member of Congress

THE FOLLOWING MEMBERS OF CONGRESS REQUEST THAT YOU
INTERCEDE ON OUR BEHALF AND ADVISE THE PRESIDENT OF
OUR DISAPPROVAL OF HIS PROPOSAL TO ABOLISH THE OFFICE
OF DRUG ABUSE POLICY.

JAMES ABDNOR
JOSEPH ADDABBO
HERMAN BADILLO
L.A. BAFALIS
ROBERT BAUMAN
ROBIN BEARD
MARIO BIAGGI
JONATHAN BINGHAM
WILLIAM BROOMFIELD
J. HERBERT BURKE
YVONNE BRAITHWATHE BURKE
JOHN L. BURTON
SHIRLEY CHISOLM
DON H. CLAUSEN
DEL CLAWSON
WILLIAM CLAY
JAMES CLEVELAND
CARDISS COLLINS
BARBER CONABLE
TOM CORCORAN
JAMES CORMAN
WILLIAM COTTER
PHILLIP CRANE
JAMES DELANEY
RONALD DELLUMS
CHARLES DIGGS
ROBERT DORNAN
THOMAS DOWNEY
DON EDWARDS
THOMAS EVANS
BILLY LEE EVANS
MILLICENT FENWICK
HAMILTON FISH JR.
DANIEL FLOOD
WALTER FLOWERS
HAROLD FORD
LOUIS FREY
TENNYSON GUYER

JAMES HANLEY
AUGUSTUS HAWKINS
MICHAEL HARRINGTON
MARGARET HECKLER
ELWOOD HILLIS
HAROLD HOLLENBECK
ELIZABETH HOLTZMAN
FRANK HORTON
HENRY HYDE
ROBERT KASTEN
JACK KEMP
EDWARD KOCH
ROBERT LAGOMARSINO
NORMAN LENT
TRENT LOTT
PETE MC CLOSKEY
JAMES MANN
MARC L. MARKS
RALPH METCALFE
ABNER MIKVA
PARREN MITCHELL
DONALD MITCHELL
TOBY MOFFETT
G.V. MONTGOMERY
MORGAN MURPHY
JOHN MEYERS
LUCIEN NEDZI
RICHARD OTTINGER
EDWARD PATTISON
CLAUDE PEPPER
JOEL PRITCHARD
TOM RAISBACK
FREDERICK RICHMOND
PETER RODINO
BENJAMIN ROSENTHAL
JOHN ROUSELOT
MARTY RUSSO
RONALD SARASIN

JAMES SCHEUER
JOE SKUBITZ
STEVE SOLARZ
LOUIS STOKES
GENE TAYLOR
JOE D. WAGGONNER JR.

WILLIAM WALSH
THEODORE WEISS
LARRY WINN JR.
LESTER WOLFF
C.W. YOUNG
LEO ZEFERETTI

26 January 1977

The Honorable Charles B. Rangel
107 Cannon House Office Building
Washington, D. C. 20515

Dear Charlie:

Thank you for your letter of January 21, 1977, in which you request office space for the House Fair Employment Practices Committee. Unfortunately, there is no space available at this time. I will hold your request in abeyance, should something open up.

With best wishes,

Sincerely,

The Speaker

TPO/ghr

23 June 1977

Dear Charlie and Alma:

Thank you for the beautiful cigars. You know how much I appreciate such a special gift. I even have them in a special place for special people — me.

With warmest regards,

Sincerely,

Thomas P. O'Neill, Jr.
The Speaker

The Honorable and Mrs. Charles B. Rangel
2432 Rayburn House Office Building
Washington, D.C. 20515

1:45 PM

~~THE~~ PRESIDENT HAS SEEN.

DEMOCRATIC
NATIONAL COMMITTEE

1625 Massachusetts Ave., N.W. Washington, D.C. 20036 (202) 797-5900

POINTS FOR DISCUSSION WITH THE PRESIDENT
WEDNESDAY, SEPTEMBER 14, 1977

- I. FUND RAISING
 - A. Status of Los Angeles (October 22, 1977) Event
 - B. Help needed from the President
- II. STATUS OF HOWELL CAMPAIGN
 - A. Organization
 - B. President's Visit
 - 1. Status of Williamsburg (Va.) Fund Raiser
- III. STATUS OF BYRNE CAMPAIGN
 - A. Organization
 - B. Reaction to President's Visit
- IV. MEETING WITH MEMBERS OF CONGRESS FROM WESTERN MOUNTAIN STATES
 - A. General Observations
 - B. Action to be taken

**Electrostatic Copy Made
for Preservation Purposes**

THE WHITE HOUSE
WASHINGTON

September 14, 1977

Hamilton Jordan

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

RE: STATUS OF PRESIDENTIAL APPOINTMENT
FARMERS HOME ADMINISTRATION STATE
DIRECTOR STATUS

THE WHITE HOUSE
WASHINGTON

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<input type="checkbox"/>	FOR INFORMATION
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<input type="checkbox"/>	LOG IN/TO PRESIDENT TODAY
<input type="checkbox"/>	IMMEDIATE TURNAROUND

ACTION	FYI	
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<input type="checkbox"/>	<input type="checkbox"/>	LANCE
<input type="checkbox"/>	<input type="checkbox"/>	SCHULTZE

<input type="checkbox"/>	ENROLLED BILL
<input type="checkbox"/>	AGENCY REPORT
<input type="checkbox"/>	CAB DECISION
<input type="checkbox"/>	EXECUTIVE ORDER
	Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

<input type="checkbox"/>	ARAGON
<input type="checkbox"/>	BOURNE
<input type="checkbox"/>	BRZEZINSKI
<input type="checkbox"/>	BUTLER
<input type="checkbox"/>	CARP
<input type="checkbox"/>	H. CARTER
<input type="checkbox"/>	CLOUGH
<input type="checkbox"/>	FALLOWS
<input type="checkbox"/>	FIRST LADY
<input type="checkbox"/>	HARDEN
<input type="checkbox"/>	HUTCHESON
<input type="checkbox"/>	JAGODA
<input type="checkbox"/>	KING

<input type="checkbox"/>	KRAFT
<input type="checkbox"/>	LINDER
<input type="checkbox"/>	MITCHELL
<input type="checkbox"/>	MOE
<input type="checkbox"/>	PETERSON
<input type="checkbox"/>	PETTIGREW
<input type="checkbox"/>	POSTON
<input type="checkbox"/>	PRESS
<input type="checkbox"/>	SCHLESINGER
<input type="checkbox"/>	SCHNEIDERS
<input type="checkbox"/>	STRAUSS
<input type="checkbox"/>	VOORDE
<input type="checkbox"/>	WARREN

THE PRESIDENT HAS SEEN.

Ham

STATUS OF PRESIDENTIAL APPOINTMENTS

September 2, 1977

<u>U.S. CIRCUIT COURTS</u>	Status of Prior Report 8/19/77
Appointed..... 0	0
Vacancies.....11*	11
Nominations at Senate..... 4	1
Nominations at White House..... 0	2
Final Process at Justice..... 0	1
In Process at Justice..... 4	4
<u>U.S. DISTRICT COURTS</u>	
Appointed..... 9	9
Vacancies.....24*	24
Nominations at Senate..... 6	5
Nominations at White House..... 0	1
Final Process at Justice..... 0	0
In Process at Justice..... 5	5
<u>U.S. COURT OF CLAIMS</u>	
Vacancies..... 2	2
<u>U.S. ATTORNEYS (94 positions)</u>	
Appointed.....39	39
Nominations at Senate..... 2	2
Nominations at White House..... 4	1
Final Process at Justice..... 4	6
In Process at Justice.....16	18
<u>U.S. MARSHALS (94 positions)</u>	
Appointed.....22	22
Nominations at Senate.....20	19
Nominations at White House..... 4	1
Final Process at Justice..... 4	5
In Process at Justice.....27	32

* We are awaiting recommendations from commissions or Senators on vacancies where there are no candidates.

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cc
Ham

FARMERS HOME ADMINISTRATION STATE DIRECTOR STATUS, September 2, 1977

<u>STATE</u>	<u>ACTION*</u>	<u>DESIGNEE or NEW DIRECTOR</u>	<u>TARGET DATE</u>
Arizona	Transfer	Manuel Dominguez	October 30
Arkansas	Program Assistant	Sherman Williams	October 30
Alabama	Removed	Elizabeth Wright	October 30
Illinois	Resignation	Jon Lindfield	October 30
Iowa	Program Assistant	Awaiting Congressional recommendations	
Kentucky	Resignation	William Burnett	October 15
Louisiana	Resignation	Awaiting Congressional recommendations	
Maine	Detail/Program Assistant	Awaiting Congressional recommendations	
Delaware	Transfer	Awaiting Congressional recommendations	
Missouri	Program Assistant	Allan Brock	October 30
Mississippi	Detail/Program Assistant	Mark Hazzard	October 30
North Carolina	Program Assistant	Clifton Perry	October 30
North Dakota	Transfer	Fred Gengler	October 10
Oklahoma	Program Assistant	John Ringwald	October 30
Oregon	Holding	Action papers for incumbent and designee prepared awaiting Congressional input	
Virginia	Program Assistant/ Resignation	E.A. Ragland	October 18
Pennsylvania	Removed	Nancy Neuman	Holding
Puerto Rico	Removed	Julio Ubides	Indefinite acting
Washington	Holding	Awaiting Congressional recommendations	
Wisconsin	Detail/Program Assistant	Larry Dahl	October 15
Wyoming	Program Assistant	Rudy Knoll	October 30

<u>STATE</u>	<u>ACTION*</u>	<u>DESIGNEE or NEW DIRECTOR</u>	<u>TARGET DATE</u>
California	Removed	Lowell Pannell	Now serving
Colorado	Removed	Ernie Phillips	Now serving
Florida	Retirement	Mike Hightower	October 25
Georgia	Resignation	Robert Blalock	September 2
Idaho	Vacant**	Andrew McCarter	Now serving
Indiana	Removed	Bud Posey	Now serving
Kansas	Removed	John Denyer	Now serving
Michigan	Removed	Bob Mitchell	October 25
Minnesota	Resigned	John Apitz	October 1
Montana	Vacant**	Wallace Edland	September 15
Nebraska	Vacant**	Leonard Hanks	Now serving
New Mexico	Resignation	David King	October 1
New York	Resignation	Karen T. Hansen	Unknown
Ohio	Removed	Gene Abercrombie	Now serving
South Carolina	Vacant**	Karl Smith	Now serving
South Dakota	Removed	Jack Weiland	Now serving
Tennessee	Resignation	Wayne Avery	Now serving
Texas	At-large	Bill Pieratt	Now serving
Utah	Vacant**	Reed Page	Now serving
Vermont	Transfer	Brian Burns	Now serving
West Virginia	Vacant**	James Facemire	Unknown

* Action taken regarding incumbent in position

** Position vacant when current selection process was started

ASCS FIELD APPOINTMENTS

September 1, 1977

STATE COMMITTEES

Appointed	50
Awaiting White House Approval	<u>1</u>
Total	51

STATE EXECUTIVE DIRECTORS

Appointed	14
Awaiting Formal Appointment	1
Awaiting Security Clearance	6
Awaiting White House Approval	4
In Process	8
Name Selected	10
Retention Planned	7
Planned Retirement	<u>1</u>
Total	51

9-1-77

<u>STATE</u>	<u>STATE EXECUTIVE DIRECTOR</u>
Alabama	Wallace Steele - Awaiting Security Clearance
Alaska	Charles Marsh - Awaiting White House 8/24
Arizona	Steve Faltis - Planned Retention - Democrat Appointed by Sec. Freeman
Arkansas	A. C. Mowery - Appointed 7/18/77
California	Howard Mays - Planned Retention - Career employee, retention recommended by State committee and Congressional Delegation and Asst. Sec. Bob Meyer
Colorado	Charles Bishopp - Appointed 8/26/77
Connecticut	George M. Wilber - Nominated by Sen. Ribicoff
Delaware	O. Joseph Penuel - Awaiting Security Clearance
Florida	Clyde Payne - Appointed 7/21/77
Georgia	Fritz Scarborough - Appointed 8/11/77
Hawaii	Clarence Chau - Planned Retention - Retention recommended by Congressional Delegation
Idaho	Harland Blackburn - Awaiting Security Clearance
Illinois	William O'Daniel - Recommended by Sen. Stevenson; Congressmen Simon and Shipley
Indiana	Loyd Jones - Appointed 8/1/77
Iowa	James K. Hatcher - Appointed 8/1/77
Kansas	Jim Ray - Appointed 7/25/77
Kentucky	Beverly Yeiser - Appointed 7/11/77
Louisiana	Willie Cooper - Planned Retention - Retention recommended by Congressional Delegation
Maine	Arthur Carroll - In Process
Maryland	James Voss - In Process
Massachusetts	Myron Maiewski - In Process
Michigan	Richard Grabemeyer - Awaiting Security Clearance

9-1-77

<u>STATE</u>	<u>STATE EXECUTIVE DIRECTOR</u>
Minnesota	Howard Carlson - Appointed 8/11/77
Mississippi	D. L. Triggs - Appointed 6/29/77
Missouri	Alan King - In Process
Montana	Lyall Schaefer -In Process
Nebraska	Glenn Kreuscher - Awaiting Security Clearance
Nevada	Albert Pasquale - Recommended by Sen. Cannon
New Hampshire	Dennis Fenton - Planned Retention - Democrat Appointed by Sec. Freeman
New Jersey	John Olsen - Recommended by Sen. Williams
New Mexico	Leo Griego - In Process
New York	George Komer - Nominated by Various Members of Delegation
North Carolina	C. P. Stewart - Awaiting Security Clearance
North Dakota	David Strauss - Appointed 8/26/77
Ohio	Ralph Cochran - In Process
Oklahoma	John Goodwin - Nominated by Various Delegation Members
Oregon	Talbert Sehorn - Appointed 8/5/77
Pennsylvania	Carl Kaufman - Nominated by Jim McHale, Farmers Union Various Congressional Referrals
Puerto Rico	Carlos Troche - Planned Retention - Democrat Appointed by Sec. Freeman
Rhode Island	Richard Kenyon - Planned Retirement, no date set Democrat appointed by Sec. Freeman
South Carolina	Melvin Crum - Appointed 6/29/77
South Dakota	Wayne Testerman -In Process
Tennessee	Royce Adams - Appointed 8/3/77
Texas	Leonard Williams - Awaiting formal appointment
Utah	Lynn Adell - Recommended by Delegation

9-1-77

STATE

STATE EXECUTIVE DIRECTOR

Vermont

Al Heald - Planned Retention - Has status in position

Virginia

Leland Beule - Awaiting White House Approval 8/22

Washington

Donald Heinemann - Awaiting White House Approval 8/25

West Virginia

James Coburn - Recommended by Cong. Rahall

Wisconsin

Stewart Huber - Recommended by Sen. Nelson

Wyoming

Carl Otto - Awaiting White House Approval 8/23

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE
WASHINGTON

September 14, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: FRANK MOORE *F. M.*

The bill being debated on the Senate floor this afternoon was just reported out of the Energy and Agriculture Committees in the Senate.

Bergland's letter to Jackson and Talmadge just arrived. *ON THE HILL* Dan is distributing them to the appropriate Senators.

The bill has not passed the House and, of course, is not on either the Speaker's or the Administration's priority list to be acted upon this year.

*The Vote ~~will~~ is Expected
Around 5:00*

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2:30 PM

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

C

MEMORANDUM FOR THE PRESIDENT

FROM:

Jim McIntyre

Jim McIntyre

SUBJECT:

Reorganization Plan #1 of 1977 -- Executive Office
of the President Reorganization

We are meeting with you at 2:30 today to recommend certain technical amendments to Reorganization Plan #1 to conform to suggestions made at our meetings with the Government Affairs Committee of the Senate and Government Operations Committee of the House.

Attached is a proposed technical amendment which makes only the following changes to the Reorganization Plan:

A. Section 2 is amended by substituting the title "Office of Administration" for "Central Administrative Unit," as requested by Richard Harden.

B. Both Committees of Congress objected to the transfer of substantial functions to the President without limitations on their redelegation. In your message accompanying the Reorganization Plan you indicated where these functions are going and Section 5 is amended to transfer principal functions directly to the attendant agencies. In those cases where the functions are transferred to you, redelegation is limited to the Executive Office of the President.

C. Section 7 is amended to provide that the effective dates for all parts of the plan shall be no later than April 1, 1978. The original plan provided no outside date.

We have met with the representatives of the Department of Commerce and they recommend this amendment in its current form to you. We have reached certain understandings with them as to a later Executive Order regarding the functions of the Office of Telecommunications Policy which will resolve the problems which Secretary Kreps discussed with you this morning.

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for Preservation Purposes**

AMENDMENTS TO
REORGANIZATION PLAN NO. 1 of 1977

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled September 14, 1977, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

Reorganization Plan No. 1 of 1977, which was transmitted to the Senate and the House of Representatives in Congress assembled on July 15, 1977, is hereby amended as follows:

A. Section 2. is amended to read:

"Section 2. Establishment of an Office of Administration.

"There is hereby established in the Executive Office of the President the Office of Administration which shall be headed by the President. There shall be a Director of the Office of Administration. The Director shall be appointed by the President and shall serve as chief administrative officer of the Office of Administration. The President is authorized to fix the compensation and duties of the Director.

"The Office of Administration shall provide components of the Executive Office of the President with such administrative services as the President shall from time to time direct."

B. Section 5. is amended to read:

"Section 5. Transfers of functions.

"The following functions shall be transferred:

"A. All functions vested in the Director of the Office of Science and Technology Policy and in the Office

of Science and Technology Policy pursuant to sections 205(a)(2), 206 and 209 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (Public Law 94-282; 90 Stat. 459), are hereby transferred to the Director of the National Science Foundation. The Intergovernmental Science, Engineering, and Technology Advisory Panel, the President's Committee on Science and Technology, and the Federal Coordinating Council for Science, Engineering and Technology, established in accordance with the provisions of Titles II, III, IV of the National Science and Technology Policy, Organization, and Priorities Act of 1976, are hereby abolished, and their functions transferred to the President.

"B. Those functions of the Office of Telecommunications Policy and of its Director relating to:

- (1) the preparation of Presidential telecommunications policy options including, but not limited to those related to the procurement and management of Federal telecommunications systems, national security, and emergency matters; and
- (2) disposition of appeals from assignments of radio frequencies to stations of the United States Government;

are hereby transferred to the President who may delegate such functions within the Executive Office of the President as the President may from time to time deem desirable. All other functions of the Office of Telecommunications Policy and of its Director are hereby transferred to the Secretary of Commerce who shall provide for the performance of such functions.

"C. The functions of the Office of Drug Abuse Policy and its Director are hereby transferred to the President, who may delegate such functions within the Executive Office of the President as the President may from time to time deem desirable.

"D. The functions of the Domestic Council are hereby transferred to the President, who may delegate such functions within the Executive Office of the President as the President may from time to time deem desirable.

"E. Those functions of the Council on Environmental Quality and the Office of Environmental Quality relating to the evaluation provided for by Section 11 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Public Law 93-577, 88 Stat. 1878), are hereby transferred to the Administrator of the Environmental Protection Agency.

"F. Those functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat (Public Law 92-463, 86 Stat. 770, as amended by Public Law 94-409, 90 Stat. 1247) are hereby transferred to the Administrator of General Services.

"G. The functions of the Economic Opportunity Council are hereby transferred to the President, who may delegate such functions within the Executive Office of the President as the President may from time to time deem desirable."

C. Section 7. is hereby amended to read:

"Section 7. Effective date.

This Reorganization Plan shall become effective at such time or times on or before April 1, 1978, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code."

THE WHITE HOUSE
WASHINGTON

September 14, 1977

Frank Moore

The attached was returned in
the President's outbox. It is
forwarded to you for your
information.

Rick Hutcheson

cc: The Vice President
Stu Eizenstat
Jack Watson

RE: ISSUES OF INTEREST IN THE
NORTHEAST

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
X	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION
FYI

Wctog you - copies already made!

	X	MONDALE
		COSTANZA
	X	EIZENSTAT
		JORDAN
		LIPSHUTZ
X		MOORE
		POWELL
	X	WATSON
		LANCE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to
Carp/Huron within
48 hours; due to
Staff Secretary
next day

	ARAGON
	BOURNE
	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
	FALLOWS
	FIRST LADY
	HARDEN
	HUTCHESON
	JAGODA
	KING

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
	STRAUSS
	VOORDE
	WARREN

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THE PRESIDENT HAS SEEN.

Frank
J

Mr. O'Neill
RE: Issues of Interest in the Northeast

9/7/77

The following lists the issues of the greatest concern to the groups which work on policy questions relating to the Northeast.

New England Congressional Caucus (6 New England States, 25 Congressmen)

Transportation

Conrail (freight trains) - NECC opposes line abandonments in NE
AMTRAK (passenger trains) - NECC opposes severe reductions in service
Would like to see more aggressive implementation of already passed programs for the Northeast Corridor.

Defense

Concern over the distribution of Department of Defense personnel, facilities and procurement expenditures.

Energy

Looking for cost equalization in energy prices
Concerned about the emphasis being put on coal conversion and its impact on NE

Northeast-Midwest Economic Advancement Coalition (16 States, 204 Congressmen)

Federal Programs

Would like to see a cost-of-living differential factored into every major federal program.

Development of an Urban Economic Development Policy addressing capital needs in the form of Regional Development Corporations.

Welfare Reform

Energy - develop a parity in energy costs between regions

Better coordination of various federal programs with each other and with state programs.

Coalition of Northeast Governors (Mass., Conn., RI, Vt., NY, NJ, & Penn.)

Transportation

Full commitment to Northeast Rail Corridor
Multi-year funding for Urban Transit Funds

Welfare Reform with fiscal relief

National Health Insurance

Full Employment Program

page 2

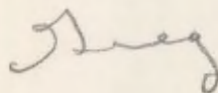
Establishment and funding of a definite urban policy coordinated with economic development programs with multi-year funding

Energy - develop a state incentive program for energy conservation

Summary

It appears that the main issue areas of concern in the Northeast are:

- (1) Transportation - full commitment of funds to the Northeast Rail Corridor
- (2) Economic Development - establishment of a federal urban policy which provides for capital needs and allows for multi-year funding
- (3) Energy - desire to eliminate the historic price differential in the cost of energy in the Northeast
- (4) Welfare Reform - implement welfare reform which provides fiscal relief for the states.

A handwritten signature in cursive script, appearing to read "J. J. J.", is located in the lower right quadrant of the page.

THE WHITE HOUSE
WASHINGTON

September 14, 1977

Frank Moore

The attached was returned
in the President's outbox today.
The signed letters to Congressman
Dante Fascell and other members
of the House Subcommittee on
International Operations are
forwarded to you for appropriate
handling and delivery.

Rick Hutcheson

cc: Zbig Brzezinski

APPROACH TO CONGRESS CONCERNING
THE REORGANIZATION OF INTERNATIONAL
EXCHANGE AND INFORMATION
PROGRAMS

*original of memo
returned to ZB's
office.*

THE WHITE HOUSE
WASHINGTON

5215

ACTION

September 13, 1977

C

MEMORANDUM FOR:

THE PRESIDENT

FROM:

DAVID AARON *DA*

SUBJECT:

Approach to Congress Concerning
the Reorganization of International
Exchange and Information Programs

Congressman Dante Fascell and other members of the House Subcommittee on International Operations have written you on the subject of the reorganization of USIA (Tab A). Frank Moore sent them an interim reply, with the substantive reply to come from you after the Administration's plans for the reorganization were firmed up. You could now send the Congressman the letter at Tab B.

RECOMMENDATION

That you sign the letter to Congressman Fascell at Tab B.

CLEMENT J. ZABLOCKI, WIS., CHAIRMAN

L. H. FOUNTAIN, N.C.
 DANTE B. FASCELL, FLA.
 CHARLES C. DIGGS, JR., MICH.
 ROBERT N. C. NIX, PA.
 DONALD M. FRASER, MINN.
 BENJAMIN S. ROSENTHAL, N.Y.
 LEE H. HAMILTON, IND.
 LESTER L. WOLFF, N.Y.
 JONATHAN B. BINGHAM, N.Y.
 GUS YATRON, PA.
 MICHAEL HARRINGTON, MASS.
 LEO J. RYAN, CALIF.
 CARLIS COLLINS, ILL.
 STEPHEN J. SOLARZ, N.Y.
 HELEN S. MEYNER, N.J.
 DON BONKER, WASH.
 GERRY E. STUDDS, MASS.
 ANDY IRELAND, FLA.
 DONALD J. PEASE, OHIO
 ANTHONY C. BEILSON, CALIF.
 WYCHE FOWLER, JR., GA.
 E (KIKI) DE LA GARZA, TEX.
 GEORGE E. DANIELSON, CALIF.
 JOHN J. CAVANAUGH, NEBR.

WILLIAM S. BROOMFIELD, MICH.
 EDWARD J. DERWINSKI, ILL.
 PAUL FINDLEY, ILL.
 JOHN H. BUCHANAN, JR., ALA.
 J. HERBERT BURKE, FLA.
 CHARLES W. WHALEN, JR., OHIO
 LARRY WINN, JR., KANS.
 BENJAMIN A. GILMAN, N.Y.
 TENNYSON GUYER, OHIO
 ROBERT J. LAGOMARSINO, CALIF.
 WILLIAM F. GOODLING, PA.
 SHIRLEY N. PETTIS, CALIF.

Congress of the United States Committee on International Relations

House of Representatives

Washington, D.C. 20515

August 3, 1977

JOHN J. BRADY, JR.
 CHIEF OF STAFF

President Jimmy Carter
 The White House
 Washington, D. C. 20500

NSC
 -4 AUG 1977

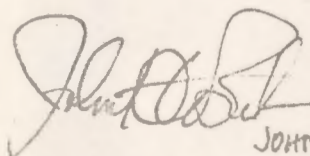
Dear Mr. President:

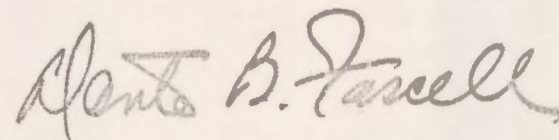
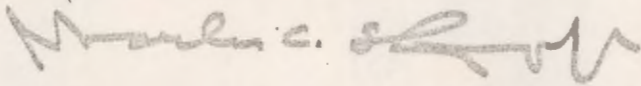
The Subcommittee on International Operations has recently completed 10 days of hearings on issues relating to the reorganization of the USIA, the Bureau of Educational and Cultural Affairs and other programs encompassed by the term public diplomacy. These hearings were held as part of the Subcommittee's effort to work jointly with the Executive Branch on public diplomacy reorganization pursuant to an understanding between Chairman Fascell and Secretary Vance.


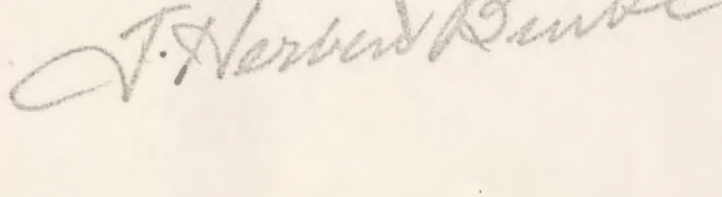
We want to share with you some general observations which we hope will be useful to you in deciding among various options for reorganization. Our findings are included in the attached memorandum.

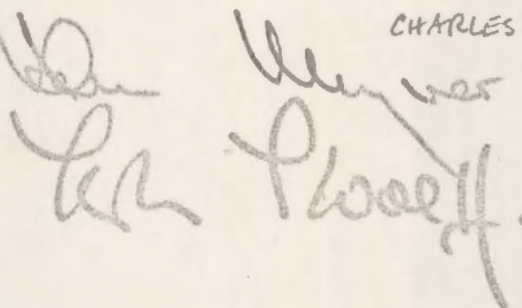
We look forward to continuing to work with you to ensure the most efficient and effective use of our public diplomacy resources.

Sincerely,


 JOHN BUCHANAN



 CHARLES C. DIGGS


 LEO J. RYAN

 J. HERBERT BURKE


 LEE P. WOLFF

Committee on International Relations

August 3, 1977

MEMORANDUM FOR THE PRESIDENT

From June 8 to June 24, 1977 the Subcommittee on International Operations of the House International Relations Committee heard testimony from 45 witnesses on issues related to reorganization of public diplomacy programs. A list of witnesses is attached. In addition, the Subcommittee received more than a score of additional unsolicited statements for inclusion in the hearing record.

Based on the hearing record, the Subcommittee has reached the following general conclusions.

1. The key to effective use of our public diplomacy resources is an awareness of the utility of these resources and a willingness to use them to further policy objectives. Reorganization is important, but only of marginal concern in dealing with this basic problem.

2. The head of the USIA (or successor agency) should be included in NSC and Cabinet meetings. Participation by the USIA Director will (a) substantially increase opportunities for maximum effective use of public diplomacy resources, and (b) allow the Agency to perform its responsibilities for explaining policy for the entire government.

3. USIA should not be merged into the Department of State. USIA must work closely with the Department of State. It is important that USIA or a successor bureau or agency have sufficient budgetary, personnel and administrative autonomy to ensure a corps of officers qualified and inspired to carry out the full range of public diplomacy in our national interests. The Director of USIA or his successor should be included in all major policy decisions within the Department of State. Similarly, lower level officials concerned with public diplomacy should be involved in all major policy formulation sessions at all appropriate lower and intermediate levels.

4. The programs administered by the Bureau of Educational and Cultural Affairs should be merged into the USIA.

5. The VOA should remain in the USIA.

6. The present authority and organization of the Board for Foreign Scholarships should be maintained.

7. The integrity of both our educational and cultural programs and of the programming of the Voice of America is of paramount concern.

Inevitably conflicts will arise over both programs in an attempt to resolve both (a) competitive short-term and long-term objectives, and (b) the distinctions between government policy and divergent opinions in the country as a whole.

No structural reorganization including the establishment of separate agencies for exchange activities or broadcasting will provide immunity from political pressures. Changes can be made, however, which will minimize the abuse of exchange programs or broadcasting activities.

8. The United States Advisory Commission on Information and the United States Advisory Commission on International Educational and Cultural Affairs can be restructured to more effectively safeguard the integrity of both exchange programs and of Voice of America programming. The following measures can ensure and safeguard the integrity and credibility vital to the success of our long-term public diplomacy programs: (a) higher caliber membership, (b) mandatory periodic reports, (c) independent staff to investigate alleged improper actions, (d) requirements for officials to notify the advisory group of pressures which would contravene the mandate of the programs, and (e) obligation of the Director to respond to the Administration and the Congress on advisory commission reports and staff investigation findings.

9. The USIA needs a fundamental internal reorganization. There are far too many officials at the assistant director level. It is important, however, that if either or both the Bureau of Educational and Cultural Affairs or the Voice of America are within a reorganized USIA that the Directors of these programs be at the highest level beneath the Agency Director and that their independent access to Congress be assured. This would further ensure the integrity and credibility of these two programs.

10. Regardless of the future relationship of USIA and CU to the Department of State, clear responsibility should be assigned to a high official of the Department of State for (a) all issues relating to the freedom of communication, (b) technical matters which may impinge on freedom of communication, and (c) coordination of public diplomacy activities of Defense, Treasury, Commerce, HEW and other agencies.

11. The mandate governing USIA operations which was issued by President Kennedy should be reviewed and updated.

Memorandum for the President
August 3, 1977
Page 3

12. While it is important to resolve the long debate about possible merger of USIA and CU, it should be recognized that a further reorganization may be advisable once the President and Congress have more completely reviewed the entire structure of the Federal Government and especially its foreign policy agencies.

Committee on International Relations

WITNESSES WHO APPEARED BEFORE THE SUBCOMMITTEE ON INTERNATIONAL OPERATIONS DURING HEARINGS ON PUBLIC DIPLOMACY AND THE FUTURE

Hon. Elmer B. Staats, Comptroller General of the United States
J. Allan Hovey, Jr., International Relations Specialist, General Accounting Office
Frank C. Conahan, Associate Director, International Division, General Accounting Office
Hobart Lewis, Chairman, U.S. Advisory Commission on Information
Dr. George H. Gallup, Chairman of the Board, American Institute of Public Opinion
Arthur C. Nielsen, Jr., Chairman, A. C. Nielsen Co.
Louis T. Olom, Staff Director, U.S. Advisory Commission on Information
Leonard H. Marks, Chairman, U.S. Advisory Commission on International Educational and Cultural Affairs
Bruce N. Gregory, President, American Federation of Government Employees, Local 1812
Charles L. Medd, General Vice President, American Federation of Government Employees
Patricia A. Woodring, President, American Foreign Service Association
Peter Wolcott, Member, Governing Board, American Foreign Service Association
Paul Ward, Member, Governing Board, American Foreign Service Association
Robert Nevitt, Deputy Assistant Director of Personnel and Training, U.S. Information Agency
Sandy Rosenblum, Inspection Staff, U.S. Information Agency
Hal Morton, Executive Officer, Center Services Division, U.S. Information Agency
Juliet Antunes, Assistant Director for Equal Employment Opportunity, U.S. Information Agency
Hon. John Richardson, former Assistant Secretary of State for Educational and Cultural Affairs
Dr. Riordan Roett, Director of Latin American Studies, School of Advanced International Studies, Johns Hopkins University
Dr. Fred Harvey Harrington, former President of the University of Wisconsin; Director of International Linkages in Higher Education
Peter DeShazo, FSIO Trainee, Madison, Wisconsin
Hon. Robert Ingersoll, former Deputy Secretary of State
Hon. Carl Rowan, former Director of U.S. Information Agency; Syndicated Columnist
Hon. Frank Shakespeare, former Director of U.S. Information Agency
Hon. James Keogh, former Director of U.S. Information Agency

WITNESSES

Page 2

Hon. Warren Christopher, Deputy Secretary of State
Frank Stanton, former Chairman, Panel on International Information,
Education and Cultural Relations
Hon. Robert D. Murphy, former Ambassador; Under Secretary of State;
Honorary Chairman, Corning Glass International
Hon. Andrew Berding, former Assistant Secretary of State for Public
Affairs; former Deputy Director, U.S. Information Agency
James A. Michener, former Member, U.S. Advisory Commission on
Information; Writer
Lawrence Y. Goldberg, former Member, U.S. Advisory Commission on
International Educational and Cultural Affairs; Chairman, Resource
Strategy Group
Kenneth W. Thompson, former Director, Higher Education for Development,
Commonwealth Professor of Government and Foreign Affairs, University
of Virginia
Hon. William Tyler, former Assistant Secretary of State for Europe;
former U.S. Ambassador in the Netherlands
Alwin Nikolais, Director and Founder of the Nikolais Dance Theater
Henry Loomis, President of the Corporation for Public Broadcasting;
former Director, U.S. Information Agency; former Director, Voice of
America
Paul R. Bartlett, private consultant in the field of international
broadcasting
Dr. Maury Lisann, private consultant in the field of international
broadcasting
Hon. David M. Abshire, Chairman of the Center for Strategic and
International Studies, Georgetown University; former Chairman, Board
for International Broadcasting; former Assistant Secretary of State
for Congressional Relations
Hon. Abbot Washburn, Commissioner, Federal Communications Commission;
former Deputy Director, U.S. Information Agency
Hon. Kenneth Giddens, former Director, Voice of America
Thomas F. Barthelme, former Executive Director, Board for
International Broadcasting
Robert Cranston, Director, Armed Forces Radio and Television Service
John C. LeGates, Lecturer and Director, Program on Information Resources
Policy, Harvard University
Donald R. Browne, University of Minnesota
Donald S. Lowitz, Chairman, Board of Foreign Scholarships



DEPARTMENT OF STATE

Washington, D.C. 20520

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5215

August 12, 1977

MEMORANDUM FOR DR. ZBIGNIEW BRZEZINSKI
THE WHITE HOUSE

Subject: Letter to the President from
Congressman Dante Fascell

In response to Ms. Dodson's NSC referral of August 9 (NSC Log No. 7705215), enclosed is a proposed response to Congressman Dante Fascell, who wrote the President offering observations on the reorganization of State-USIA relationships.

We recommend that copies of the reply be sent to the other members of the Subcommittee, who signed the letter to the President.

David Anderson
for

Peter Tarnoff
Executive Secretary

THE WHITE HOUSE

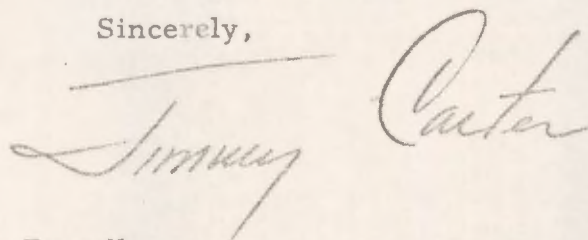
WASHINGTON

To Congressman Dante Fascell

I want to thank you and your colleagues for your letter of August 4, 1977. The letter and memorandum accompanying it were very useful as I made my decisions on the reorganization of our international exchange and information programs. On August 26, 1977, I approved the merger of the State Department's cultural affairs effort into USIA and the development of an ACDA-like relationship between the Department of State and the expanded USIA. I also approved continuation of the Voice of America in its present status as an integral part of USIA. We are now going to move ahead to work out the details of these actions and, in the process, we will make adjustments in USIA's internal organization and methods of operation. As we do this we will draw on the observations and advice you and your colleagues have provided to us.

I share your conviction that our information and cultural exchange efforts are one of the most important aspects of our foreign policy effort. I want to ensure that we have imaginative programs in this area which are energetically managed and led. For the money we spend, these are among the least costly operations of the government; nevertheless, the effect can continue for years after the money has been spent. When I ask for additional money for these fields, I want the Congress to be able to feel confident that we are making the best use of it we can. The reorganization we are now undertaking will put us in a better position to do that.

Sincerely,

A handwritten signature in cursive script, reading "Jimmy Carter". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

The Honorable Dante Fascell
House of Representatives
Washington, D. C. 20515

THE WHITE HOUSE

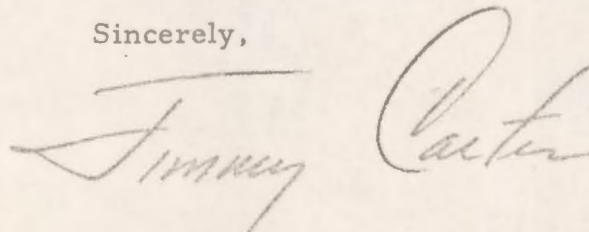
WASHINGTON

To Congressman John Buchanan

I want to thank you and your colleagues for your letter of August 4, 1977. The letter and memorandum accompanying it were very useful as I made my decisions on the reorganization of our international exchange and information programs. On August 26, 1977, I approved the merger of the State Department's cultural affairs effort into USIA and the development of an ACDA-like relationship between the Department of State and the expanded USIA. I also approved continuation of the Voice of America in its present status as an integral part of USIA. We are now going to move ahead to work out the details of these actions and, in the process, we will make adjustments in USIA's internal organization and methods of operation. As we do this we will draw on the observations and advice you and your colleagues have provided to us.

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Sincerely,

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The Honorable John H. Buchanan, Jr.
House of Representatives
Washington, D. C. 20515

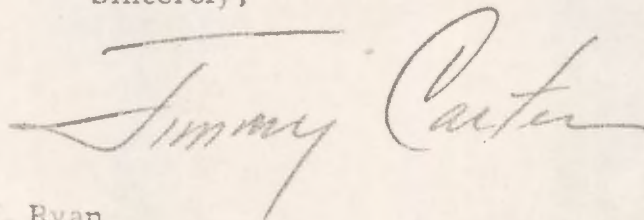
THE WHITE HOUSE
WASHINGTON

To Congressman Leo Ryan

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Sincerely,

A handwritten signature in dark ink, reading "Jimmy Carter". The signature is fluid and cursive, with a long horizontal line extending from the "J" and a large, sweeping "C" for "Carter".

The Honorable Leo J. Ryan
House of Representatives
Washington, D. C. 20515

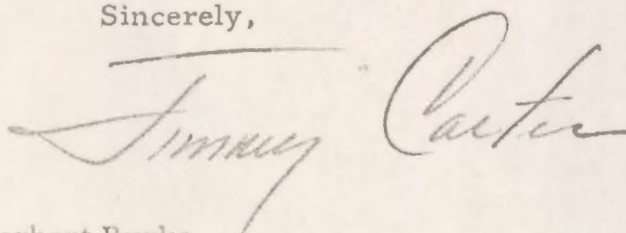
THE WHITE HOUSE
WASHINGTON

To Congressman J. Herbert Burke

I want to thank you and your colleagues for your letter of August 4, 1977. The letter and memorandum accompanying it were very useful as I made my decisions on the reorganization of our international exchange and information programs. On August 26, 1977, I approved the merger of the State Department's cultural affairs effort into USIA and the development of an ACDA-like relationship between the Department of State and the expanded USIA. I also approved continuation of the Voice of America in its present status as an integral part of USIA. We are now going to move ahead to work out the details of these actions and, in the process, we will make adjustments in USIA's internal organization and methods of operation. As we do this we will draw on the observations and advice you and your colleagues have provided to us.

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Sincerely,

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The Honorable J. Herbert Burke
House of Representatives
Washington, D. C. 20515

THE WHITE HOUSE

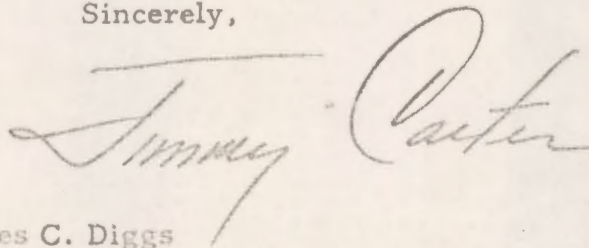
WASHINGTON

To Congressman Charles Diggs

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The Honorable Charles C. Diggs
House of Representatives
Washington, D. C. 20515

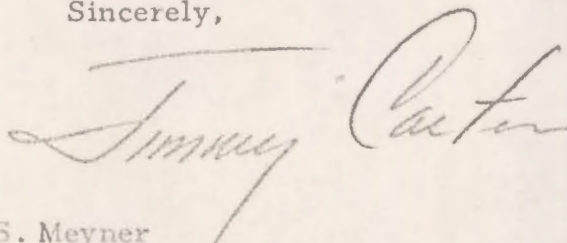
THE WHITE HOUSE
WASHINGTON

To Congresswoman Helen Meyner

I want to thank you and your colleagues for your letter of August 4, 1977. The letter and memorandum accompanying it were very useful as I made my decisions on the reorganization of our international exchange and information programs. On August 26, 1977, I approved the merger of the State Department's cultural affairs effort into USIA and the development of an ACDA-like relationship between the Department of State and the expanded USIA. I also approved continuation of the Voice of America in its present status as an integral part of USIA. We are now going to move ahead to work out the details of these actions and, in the process, we will make adjustments in USIA's internal organization and methods of operation. As we do this we will draw on the observations and advice you and your colleagues have provided to us.

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The Honorable Helen S. Meyner
House of Representatives
Washington, D. C. 20515

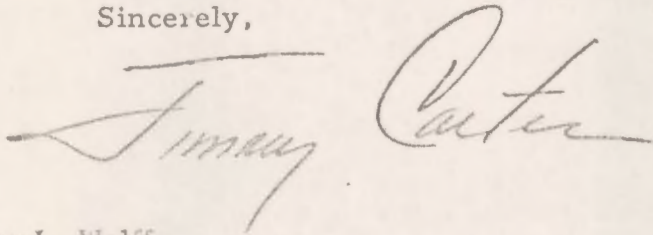
THE WHITE HOUSE
WASHINGTON

To Congressman Lester Wolff

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Sincerely,

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The Honorable Lester L. Wolff
House of Representatives
Washington, D. C. 20515

THE WHITE HOUSE
WASHINGTON

September 14, 1977

Bob Lipshutz

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Flick Hutcheson

cc: Frank Moore

RE: BILL GUNTER AND SETTLEMENT OF
INDIAN CLAIMS

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
X	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
		MONDALE
		COSTANZA
		EIZENSTAT
		JORDAN
X		LIPSHUTZ
	X	MOORE
		POWELL
		WATSON
		LANCE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER
	Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

	ARAGON
	BOURNE
	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
	FALLOWS
	FIRST LADY
	HARDEN
	HUTCHESON
	JAGODA
	KING

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
	STRAUSS
	VOORDE
	WARREN

THE WHITE HOUSE
WASHINGTON

9-14-77

To Bob Lipschutz

Talk to Scoop Jackson
re settlement of Indian
Claims.

Perhaps Bill Gunter
could head a task
force in drafting
legislation

J.C.

Electrostatic Copy Made
for Preservation Purposes